

In the Matter of:

REDLER

vs.

MARRIOTT OWNERSHIP RESORTS (ST. THOMAS)

C.J. ABRAHAM

April 23, 2015



REDLER vs. MARRIOTT OWNERSHIP RESORTS (ST. THOMAS)
C.J. ABRAHAM

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1 IN THE DISTRICT COURT OF THE VIRGIN ISLAND
2 DIVISION OF ST. THOMAS AND ST. JOHN

3 CASE NO.: 3:14-CV-017

4 JESSYCA REDLER and
5 BRYAN REDLER,

6 Plaintiffs,

7 vs.

8 MARRIOTT OWNERSHIP RESORTS
9 (ST. THOMAS), INC., d/b/a
10 MARRIOTT FRENCHMAN'S COVE

11 Defendant.

12 _____/

13 DEPOSITION OF: C.J. ABRAHAM

14 DATE TAKEN: Thursday, April 23, 2015

15 TIME: 10:58 a.m. - 4:28 p.m.

16 PLACE: Law Offices of S. Marks, P.A.
17 1900 Glades Road, Suite 102
Boca Raton, Florida 33431

18 TAKEN BY: The Defendant

19 REPORTED BY: Barbara L. Kent, RMR, RPR, FPR, CSR
20 Court Reporter and Notary Public

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23 It is hereby stipulated by and between counsel for the

24 respective parties that the reading and signing of the

25 deposition be Reserved.

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1 P R O C E E D I N G S

2 * * * *

3 THE VIDEOGRAPHER: Here begins the videotaped
4 deposition of Carl J. Abraham, taken in the matter
5 of case number 3:14-CV-017. Jessyca Redler and
6 Bryan Redler versus Marriott Ownership Resorts,
7 St. Thomas, Inc., doing business as Marriott,
8 Frenchman's Cove. To be heard in the United States
9 District Court of the Virgin Islands, Division of
10 St. Thomas and St. Johns.

11 The deposition is being held at the law
12 offices of Jeffrey Marks, located at 1900 Glades
13 Road, Suite 102, Boca Raton, Florida.

14 Today's date is April 23rd, 2015 and the time
15 on the video monitor is 11:10 a.m.

16 The Court Reporter is Barbara Kent, and the
17 Video Specialist is Paul Smith on behalf of Orange
18 Legal.

19 Would Counsel please introduce yourself,
20 after which the Court Reporter will swear in the
21 witness.

22 MS. BENTZ: Karin Bentz, Law Office of Karin
23 A. Bentz, PC, on behalf the Plaintiffs, Jessyca and
24 Bryan Redler.

25 MS. CHARLES-COLLINS: Kelly Charles-Collins

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1 of Hamilton, Miller & Birthisel on behalf of the
2 Defendant, Marriott Ownership Resorts, St. Thomas.

3 THE COURT REPORTER: Would you raise your
4 right hand, sir.

5 Do you solemnly swear or affirm the testimony
6 you're about to give will be the truth, the whole
7 truth, and nothing but the truth, so help you God.

8 MR. C.J. ABRAHAM: I do.

9 C.J. ABRAHAM,
10 Having been first duly sworn by the court reporter, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. CHARLES-COLLINS:

14 Q. Would you please state your name for the
15 record.

16 A. Carl Abraham.

17 Q. Would you like me to call you Dr. Abraham?

18 A. Carl, Carl Abraham.

19 Q. Okay.

20 A. It doesn't matter.

21 Q. All right.

22 Dr. Abraham, my name is Kelly
23 Charles-Collins, I'm the attorney who will be taking your
24 deposition today on behalf of the Marriott. I know that
25 you've been through a deposition before, but I'm going to

1 just ask you to indulge me in going through a couple of
2 things.

3 One is to please allow me to finish my
4 question before you begin your answer, and I will do the
5 same, allow you to finish your answer before I ask you
6 another question.

7 Also, if you would make sure to answer all of
8 my questions and words, so that the court reporter can
9 take them down, and that we not speak over each other so
10 that the court reporter can take down everything that is
11 being said.

12 If you need a break at any time, please let
13 me know that you need a break, and we will take one.
14 However, if there's a question pending, I just ask that
15 you answer the question before you take the break.

16 What's your address?

17 A. In New York, is 3 Baker Hill Road, Great
18 Neck, New York; and down here is 5232-A, Lake Catalina
19 Drive North, in Boca Raton.

20 Q. Say that street name, again. I'm sorry?

21 A. Lake Catalina Drive North, in Boca Raton.

22 Q. And do you reside in both places throughout
23 the year.

24 A. Six months in New York, in the -- from May to
25 the first week of November; and I work down here, and

1 from November to the first week of May.

2 Q. Okay. And you own your own company; correct?

3 A. Yes.

4 Q. What's the name of the company?

5 A. Scientific Advisory Services.

6 Q. And how long have you had that company?

7 A. Since September, 1998.

8 Q. And has anyone else -- do you have employees,
9 or does anyone work with you in that company?

10 A. Yes, I have -- all my staff is in New York,
11 and I -- I own a couple other companies, also.

12 Q. Okay. As it relates to engineering, your job
13 as a safety expert, is that all done under Scientific
14 Advisory Services?

15 A. Yes.

16 Q. Now, I know that you have quite a few
17 initials after your name.

18 A. What -- I have to qualify that. It's also
19 done under another name.

20 Q. Okay.

21 A. Another company.

22 Q. What's the other name?

23 A. Company called ForceField FF, LTD.

24 Q. FF?

25 A. It's ForceField FF, (NA), LTD.

1 Q. Okay. And for this case, the Plaintiff --
2 the Plaintiffs Counsel retained you; right? To be their
3 safety expert; correct?

4 MS. BENTZ: Object to form.

5 BY MS. CHARLES-COLLINS:

6 Q. Were you retained by Plaintiffs Counsel?

7 A. That's one of the areas, yes.

8 Q. Okay. So were you retained under Scientific
9 Advisory Services, or under ForceField, NA?

10 A. Well, they used my background on the
11 ForceField, in conjunction with Scientific.

12 Q. What do you mean by that?

13 A. Well, I deal with brain injuries in sports,
14 in ForceField, on almost a daily basis. And I've been
15 involved in that field, from 1980 to the present time.

16 Q. Okay. All right. So let's go through a
17 couple of things; just to establish, you are not a
18 medical doctor; correct?

19 A. No.

20 Q. You're not a neurologist?

21 A. Well, a neurologist is not a -- in some --
22 yes, I'm not -- I am not a neurologist, correct.

23 Q. Okay. You're not a radiologist?

24 A. No, I am not.

25 Q. You are not a neuropsychologist?

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1 A. Psycho -- neuropsychologist is not a medical
2 doctor.

3 Q. I didn't ask you if it was a medical doctor.

4 A. Well, you're asking me about doctors.

5 Q. No. What I asked you?

6 A. They're not a doctor.

7 Q. Mr. Abraham, one of the things that will make
8 this deposition go faster is, if you listen to the
9 specific questions I'm asking you, and answer that
10 question.

11 I am asking you a separate question. The
12 question is: You are not a neuropsychologist; correct?

13 A. Okay. Like a neuropsychologist we're both
14 not medical doctors.

15 Q. You are not a neuropsychologist; correct?

16 A. Correct.

17 Q. You are not an ophthalmologist?

18 A. No.

19 Q. You are not a physical therapist?

20 A. No.

21 Q. You are not a psychologist?

22 A. Nope.

23 Q. You are not a psychiatrist?

24 A. No.

25 Q. You are not a biomechanical engineer?

1 A. I handle -- I have a background in
2 biomechanical engineering.

3 **Q. What does that mean?**

4 A. For about -- well, I handle -- in sports, I
5 handle the biomechanical aspects of injuries.

6 **Q. But are you a --**

7 A. From the -- from concussions to other
8 injuries to the body.

9 **Q. Okay. But are you a biomechanical engineer?**

10 A. I have been qualified in court in those
11 areas.

12 **Q. When?**

13 A. You want a specific date?

14 **Q. Yes.**

15 A. I have been in this business 45 years.

16 **Q. When have you been qualified as a**
17 **biomechanical engineer?**

18 A. In the past.

19 **Q. When in the past?**

20 A. That's as general as I can give you, and as
21 specific as I can give you.

22 **Q. Is there anything that would allow you to**
23 **give me a more specific answer?**

24 A. I would have to look up a few cases --

25 **Q. Okay.**

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1 A. -- and -- that I testified on, and from those
2 cases, I can render a more exact opinion -- reply.

3 Q. Okay. And do you know off-hand the name of
4 any of those cases that you would look at?

5 A. Fifty thousand cases, you would like me to
6 remember those names?

7 Q. I asked you --

8 A. I don't.

9 Q. -- specifically as to biomechanical engineer,
10 where you said that you were qualified as an expert, do
11 you recall the names of any of the cases?

12 A. The only way I can do that is, look up, if I
13 can recall the cases in my office.

14 Q. Okay. You are not an orthopaedist, or an
15 orthopaedic surgeon; correct?

16 A. No.

17 Q. I noticed that you have a J.D. behind your
18 name. Are you a licensed attorney?

19 A. No.

20 MS. BENTZ: Object to form on that last one.

21 BY MS. CHARLES-COLLINS:

22 Q. You would agree with me that you're not
23 qualified to make any type of medical diagnosis?

24 MS. BENTZ: Object to form.

25 THE WITNESS: With reference to what?

1 BY MS. CHARLES-COLLINS:

2 Q. To anything? Any type of medical diagnosis?

3 A. Well, with reference to concussions, I speak
4 on -- in that whole -- in that area on concussions at
5 major conventions in the United States, Canada, and
6 Europe.

7 Q. I understand that but --

8 A. And -- well, if you understand that, then, I
9 speak in those areas, the only way I could speak in those
10 areas, if I'm -- if -- only if I'm respected as an expert
11 in those areas.

12 Q. That's not my question. I don't care if
13 you're an expert in those areas. My question is: That
14 you are not qualified to render a medical diagnosis?

15 A. I am.

16 Q. How is that?

17 A. Because --

18 Q. What are your specific qualifications that
19 allow you to render a medical diagnosis?

20 A. Because I've been involved with hundreds of
21 brain injury cases in -- in sports. I have presented
22 many talks, and I have also published peer review
23 articles in those areas.

24 And just for your own edification,
25 concussions is not a subject that is studied and

1 specialized in in medical school. It's learned
2 afterwards. I learned the same way the doctors did after
3 I got out of school.

4 **Q. You have no medical training, do you?**

5 A. In what area? I've been involved in being
6 taught anatomy by the assistant medical examiner of
7 Nassau County. I have been through, with him, over fifty
8 autopsies, going to every part of the body, from the
9 brain to the ankle. And I am self-taught.

10 So, when you say, I am self-taught, like a
11 lot of doctors that are rendering opinion, like your
12 psychologists in this particular --

13 **Q. We're not talking about the psychologist.**

14 A. I am. Because she's rendering an opinion
15 that's totally --

16 **Q. I'm asking you about your --**

17 A. -- that's totally.

18 **Q. -- medical training.**

19 A. I am not finished with my reply, when I'm
20 finished with my reply, you may reply. That is our
21 agreement. It is --

22 **Q. Right.**

23 A. I want to --

24 **Q. But this is my deposition, and I'm going to**
25 **ask you to answer the questions that I have asked.**

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1 MS. BENTZ: Yes, but Dr. Abraham has the
2 right to answer the question.

3 MS. CHARLES-COLLINS: But he is not answering
4 the question.

5 THE WITNESS: Whether I -- whether I am or
6 not, you have to give me the courtesy, as -- the
7 same courtesy that I'm giving you to finish your
8 questions.

9 MS. BENTZ: I suggest you let him finish his
10 question because he might actually, you know,
11 conclude his answer, and then we could not have to
12 keep asking it over and over.

13 MS. CHARLES-COLLINS: Okay.

14 MS. BENTZ: Okay.

15 MS. CHARLES-COLLINS: Uh-huh.

16 THE WITNESS: I mean, you are allowed a
17 individual, unnamed, Karen Postal.

18 MS. CHARLES-COLLINS: I'm going to move to
19 strike -- now I'm not going to --

20 THE WITNESS: You can move to strike after I
21 get through.

22 MS. CHARLES-COLLINS: Karin, can we go off on
23 the report for a second?

24 MS. BENTZ: Yeah.

25 THE VIDEOGRAPHER: Going off video record at

1 11:21 a.m.

2 (At about 11:21 a.m. recess.)

3 (At about 11:22 a.m. proceedings reconvened.)

4 THE VIDEOGRAPHER: Back on record at

5 11:22 a.m.

6 THE WITNESS: My medical training relates to
7 real life situations, involving going through
8 autopsies, over fifty of them, with being taught by
9 the assistant medical pathologist in Nassau County.

10 Handling over several hundred cases involving
11 brain injuries over the last 45 years. Going
12 through the medicals, discussing the medical
13 diagnosis, and evaluation with medical specialists;
14 and it's something that I've learned, not only
15 learned, but I've written peer review articles in
16 that subject, and have presented papers nationally,
17 and internationally in that area.

18 So when you say that I'm not medically
19 trained, I'm not medically trained as an
20 orthopedist. I'm medically trained in what I
21 value cases in, specifically, this is one of
22 them.

23 BY MS. CHARLES-COLLINS:

24 Q. All right. Are you done?

25 A. Yes.

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1 Q. You have no formal medical training?

2 A. I stated that.

3 MS. BENTZ: I don't think it was on the
4 record. So --

5 BY MS. CHARLES-COLLINS:

6 Q. And just like you're not qualified to render
7 a medical diagnosis, you're not qualified to render any
8 type of prognosis; correct?

9 A. That's not correct.

10 Q. And you're not qualified to make any type of
11 the medical causation determinations; correct?

12 A. Totally incorrect.

13 Q. Okay.

14 A. I deal with impacts and resulting brain
15 injuries on a weekly basis. Not on -- not on a -- a
16 semi-annual basis.

17 Q. What's your understanding of what you were
18 retained by Plaintiffs Counsel to do in this case?

19 A. To determine the liability in the subject
20 matter, how the brain injuries were caused, how they were
21 caused, and to render an opinion based upon my
22 experience, and knowledge of valuating cases involving
23 impacts to the brain.

24 Q. You weren't retained to render legal
25 opinions?

1 A. When I determine liability, the liability
2 relates to the legal aspects of the case, and based upon
3 my background in personal injury cases from 1970 to the
4 present time, and the fact that I have presented many
5 papers before the Bar Association in the area of law, and
6 how it -- and the interaction of the technical aspects of
7 cases, and the law, I do have a background in that area,
8 that I can render an opinion.

9 I do read voluminously on appellate decisions
10 relating to cases I'm involved in.

11 Q. So is it your opinion that if somebody reads
12 a lot of cases, or talks to people about a lot of cases,
13 that they're somehow qualified to be an expert in that
14 area?

15 A. I have done more than talk to people. I've
16 presented papers, and made presentations to the legal
17 profession on both coasts.

18 Q. Have you ever practiced law?

19 A. No.

20 Q. Okay.

21 MS. BENTZ: I'm just going to state for the
22 record that Dr. Abraham does hold a JD degree.

23 MS. CHARLES-COLLINS: We already know that.

24 MS. BENTZ: Okay.

25 MS. CHARLES-COLLINS: I'm going to move to

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1 strike. But we already know that, but he's not

2 licensed to practice law anywhere, so --

3 BY MS. CHARLES-COLLINS:

4 Q. Have you ever met the Plaintiffs?

5 A. No.

6 Q. Have you ever spoken to them?

7 A. I don't recall.

8 Q. Did you have an opportunity to conduct an
9 inspection at the location where the Redlers allege that
10 they were injured, or that Mrs. Redler was injured?

11 A. What do you mean by alleged? She was
12 injured.

13 Q. I didn't ask you that. I said, did you
14 have --

15 A. You mentioned, alleged.

16 Q. Listen, I'm not here to fight with you about
17 what the allegations in this case are --

18 A. But you --

19 Q. -- I'm here to take your deposition. That's
20 the question that I asked you. So, my question is, were
21 you able to take --

22 A. Can I go back?

23 Q. -- did you do --

24 A. Excuse me.

25 Q. -- an inspection at the location where

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1 **Mrs. Redler alleged that she was injured? That's my**
2 **question.**

3 A. The use of the word alleged is not -- is
4 incorrect.

5 Q. **That is not --**

6 A. It's stated that you used the word, allege.
7 She was injured, and there were witnesses to this.

8 Q. **I didn't ask you that. My question is: Did**
9 **you have the opportunity to do an inspection at the**
10 **location where Mrs. Redler alleged that she was injured?**

11 A. I --

12 Q. **That's my question.**

13 A. -- I did perform an inspection at the area,
14 and the location where Ms. Redler was injured, not
15 alleged to be injured.

16 Q. **And where is that? Where was that location?**

17 A. At the Marriott Frenchman's Cove.

18 Q. **And where is that?**

19 A. St. Thomas.

20 Q. **And when did you do that inspection?**

21 **Can I ask you what you're referring to?**

22 A. My report.

23 Q. **Which report is that?**

24 A. My report rendered on December 22nd.

25 Q. **What year?**

1 A. 2014.

2 Q. Thank you.

3 Is that the date that you did the inspection?

4 A. I don't recall. I don't recall what the date
5 was.

6 Q. Okay. Do you know if you performed more than
7 one?

8 A. Oh, I -- on December 12th, 2014.

9 Q. Okay.

10 A. I inspected the area.

11 Q. Okay. And that's from your report?

12 A. Yes.

13 Q. Okay. Did you inspect the area more than
14 once, or just once?

15 (Interruption by iPad. SIRI: I'm not sure
16 what you said.)

17 MS. BENTZ: Sorry. Siri decided to chime in
18 on our deposition, I was trying to turn it off.
19 That was funny.

20 BY MS. CHARLES-COLLINS:

21 Q. Did you inspect the location once, or more
22 than once?

23 A. I might have seen it more than once.

24 Q. Okay. So other than December 12th of 2014,
25 when do you think you might have seen it?

1 A. I don't -- I don't recall, but I've seen it
2 more than once.

3 Q. And was that for the purpose of conducting an
4 inspection, or was -- what was the purpose of you seeing
5 it, other than on December 12th?

6 A. As a member of the Marriott Frequent Flier,
7 and the fact that I've stayed at Marriott Hotels, I
8 wanted to see their facilities, and I had access to the
9 hotel as an invitee.

10 Q. Okay. And was this prior to you being
11 retained by Plaintiffs Counsel, or subsequent to your
12 retention?

13 A. Subsequent.

14 Q. So do you know when you went there?

15 A. No.

16 Q. What did you do when you got there?

17 A. Just looked around.

18 Q. Did you advise Plaintiffs Counsel that you
19 would be there to look around?

20 A. No.

21 Q. Tell me what you meant by -- mean by, you
22 looked around?

23 A. I'd look around. I went to a number of
24 hotels while I was there. Just visiting them.

25 Q. Is there anything that would allow you to

1 narrow down the time frame when you went to just look
2 around?

3 A. No.

4 MS. BENTZ: Can we go off the record?

5 MS. CHARLES-COLLINGS: Yeah.

6 THE VIDEOGRAPHER: Going off record at

7 11:31 a.m.

8 (At about 11:31 a.m. recess.)

9 (At about 11:32 a.m. proceedings reconvened.)

10 THE VIDEOGRAPHER: Back on record at

11 11:32 a.m.

12 (Deposition Exhibit 2 marked.)

13 BY MS. CHARLES-COLLINGS:

14 Q. So, Dr. Abraham, you are looking at the
15 report that's dated December 22nd, 2014, which we have
16 marked as Defendants Exhibit Number 2. I'm going to show
17 you the copy that I have as Exhibit Number 2.

18 Can you look through this, and just let me
19 know if this is a full copy of the report?

20 A. Yes.

21 Q. Okay. And then you also did another report
22 in August of 2013; is that correct?

23 A. Yes.

24 (Deposition Exhibit 1 marked.)

25 BY MS. CHARLES-COLLINGS:

1 Q. Would you look at Defendant's Exhibit 1 and
2 tell me if that is a complete copy of your report?

3 MS. BENTZ: Do you have another copy?

4 MS. CHARLES-COLLINS: Yeah, do you want one?

5 MS. BENTZ: Yeah. I don't bring paper, you
6 know that.

7 MS. CHARLES-COLLINS: Oh, here. I'm sorry.

8 MS. BENTZ: Thank you.

9 MS. CHARLES-COLLINS: You're welcome.
10 That one, let me give you the pictures, here.

11 MS. BENTZ: Thank you.

12 MS. CHARLES-COLLINS: That's for the December
13 report.

14 MS. BENTZ: Okay.

15 THE WITNESS: Got it.

16 BY MS. CHARLES-COLLINS:

17 Q. Okay. Besides those two reports, did
18 you -- have you done any other reports in this case
19 besides the August one, and the December report, any
20 written reports?

21 A. I just have notes that I have.

22 Q. Okay. And where are those notes kept?

23 A. Right here. I kept them right here.

24 Q. Okay. So those are your handwritten notes?

25 A. Those are my handwritten notes.

1 Q. Okay. And what are those handwritten notes
2 from?

3 A. The mediation hearing.

4 Q. Besides the mediation hearing, do you have
5 any other handwritten notes?

6 A. I have notes on my report, here, and some
7 legal.

8 Q. Not notes that you take, like, for yourself
9 to --

10 A. Yes.

11 Q. But beyond that, so do you have draft notes?

12 A. No.

13 Q. Do you have notes from the inspection?

14 A. No.

15 Q. Okay. Of the two reports, which would you
16 consider to be the operative report in this case?

17 A. They're both good.

18 Q. What was the circumstances under which you
19 did the August 2013 report, what was that done for?

20 A. That was done with the thought that I
21 wouldn't have to go down to St. Thomas, and perform an
22 inspection.

23 Q. So tell me what you reviewed in order to
24 draft that August 2013 report? What did you consider?

25 MS. BENTZ: Just going to state for the

1 record, that that report is not admissible as it
2 was offered for purposes of settlement, pursuant to
3 Rule 408. It's also considered work product.

4 MS. CHARLES-COLLINS: But it was filed as
5 part of your disclosures with the Court.

6 MS. BENTZ: Still, for purposes of
7 settlement.

8 MS. CHARLES-COLLINS: But it was filed with
9 the Court, and he said it's an operative report.

10 MS. BENTZ: Well, it's still --

11 THE WITNESS: There's nothing wrong with it.

12 MS. BENTZ: Okay.

13 THE WITNESS: Nothing at all.

14 BY MS. CHARLES-COLLINS:

15 Q. Can you tell me for the August 2013 report,
16 what you reviewed?

17 A. I had an oral conversation with Ms. Bentz, as
18 to the facts of the case. And I think those are the
19 only -- that's the only thing I had, and a few
20 photographs.

21 Q. Okay.

22 A. And she might have given me medicals, I don't
23 recall what -- what she gave me, but whatever I have, the
24 whole thing -- everything that I have on the case is
25 here.

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1 Q. Okay.

2 A. And I worked from that.

3 Q. Okay.

4 A. And I used my background and experience in
5 handling similar cases.

6 Q. Did you look at the complaint in this case in
7 order to draft this report?

8 A. It depends if I had -- when was the complaint
9 originally done?

10 Yeah. There was an original complaint, and
11 amended complaint. If that complaint -- let's see.
12 There was a verified complaint.

13 Nope, let me just get the original complaint.

14 Q. Okay.

15 A. See the date on that.

16 MS. BENTZ: Do you want to go off the record?

17 THE WITNESS: No, I just can't find -- I
18 don't think I had a complaint to even go by.

19 BY MS. CHARLES-COLLINS:

20 Q. Okay.

21 A. Let's leave it at that.

22 Q. And photos that are attached to your report
23 so we're looking --

24 A. They were --

25 Q. Hold on for a second.

1 We're looking at the August 2013 report, so
2 the ones that are attached at pages 11 and 12.

3 A. Yeah.

4 Q. Did you take those photographs?

5 A. No.

6 Q. Okay.

7 A. I didn't go down to St. Thomas.

8 Q. So where are those photographs from?

9 A. They were sent to me by the -- their office.
10 I requested them.

11 Q. Okay. By the Plaintiff's attorney?

12 A. Someone in their office sent it to me.

13 Q. Okay. And what are those photographs of?

14 A. Umbrellas in cement.

15 Q. Okay. And do you know when those photos were
16 taken?

17 A. Before my report.

18 Q. Okay. But do you know when? Did anyone tell
19 you when they were taken?

20 A. No.

21 Q. Do you know if they were taken on the day of
22 the incident, as alleged in the complaint?

23 A. If that's what it alleges, then, it was taken
24 at -- on the day of the accident.

25 Q. No. I think I confused you with my question.

1 My question is: Do you know whether these
2 photos were taken on that day? I'm not saying that they
3 were, I'm just saying on the date alleged in the
4 complaint?

5 A. If -- if -- well, they stated that it was
6 alleged in the complaint, so --

7 Q. No. I'm saying on the date alleged in the
8 complaint. So were these pictures -- do you know if
9 these pictures were taken on the date they're saying the
10 incident occurred?

11 Maybe that's clearer.

12 MS. BENTZ: Okay. Just for the record, these
13 photos were offered as Exhibits, and I believe they
14 were taken by Plaintiff's husband on the day of the
15 incident.

16 MS. CHARLES-COLLINS: Okay.

17 THE WITNESS: Thank you.

18 MS. CHARLES-COLLINS: I'm going to ask Karin
19 not to testify for you anymore.

20 THE WITNESS: That was excellent, though.

21 MS. CHARLES-COLLINS: Yeah. But she can't
22 testify for you.

23 THE WITNESS: Together we're terrific.

24 MS. BENTZ: You know, but --

25 THE WITNESS: No, that's good to know.

1 MS. BENTZ: She's talking about these photos.
2 It's really unclear what photos you're talking
3 about.

4 THE WITNESS: Yes.

5 MS. CHARLES-COLLINS: I know I specifically
6 said photos on pages 11 and 12 of his August 2013
7 report.

8 THE WITNESS: Okay. Right.

9 MS. BENTZ: Okay. So that would be Bates
10 Numbers 142, and 143.

11 THE WITNESS: Right. Okay. Now --

12 MS. CHARLES-COLLINS: Yeah.

13 BY MS. CHARLES-COLLINS:

14 Q. Do you -- do you -- okay. Let me make it
15 clear. Do you know what date those photos were taken?
16 Do you know personally?

17 A. Now I recall, because they were presented to
18 me, because at the time of the accident or incident,
19 Mr. Redler took some photographs.

20 Q. Okay. And do you recall that now because
21 Karin just refreshed your memory?

22 A. Yes.

23 Q. Okay.

24 A. Thank you.

25 Q. Do you know if Mr. Redler took any other

1 **photographs, other than the ones that are attached and**
2 **have Bate stamp numbers 142 and 143?**

3 A. I'm sure he did not stop at two photographs.

4 **Q. Do you know for sure if he took any others?**

5 A. There are others.

6 **Q. Were you provided with other photographs**
7 **besides the ones that you attached to your report?**

8 A. I think I recall seeing photographs of the
9 umbrella down.

10 **Q. Do you know where those photos are now?**

11 A. I think they're part of -- let me see if I
12 can find them.

13 Can I see that --

14 MS. BENTZ: What?

15 THE WITNESS: That report by the --

16 MS. BENTZ: The August one?

17 THE WITNESS: No, not that -- the other one
18 from -- but there's -- there's -- you got it?

19 BY MS. CHARLES-COLLINS:

20 **Q. And what are you referring to?**

21 **Dr. Abraham, what report is that?**

22 A. This is the report by Rimkus Consulting
23 Group.

24 Nope, he didn't have them, either. I did see
25 them somewhere.

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1 Q. Okay.

2 A. I don't recall.

3 Q. Okay. And for your December 22nd report,
4 tell me what you relied on? What documents you reviewed
5 on in order to render your opinions in that report?

6 A. I had the medicals -- medical evaluation from
7 the doctor in St. Thomas.

8 Q. Do you remember what doctor that was?

9 A. Yeah, I have it here.

10 Like the ones I didn't know -- as of last
11 night, I thought everything was in order.

12 Q. Okay.

13 A. But I know it's here.

14 Q. Okay.

15 A. Dr. Weisher.

16 THE COURT REPORTER: Can you spell it for me,
17 please?

18 THE WITNESS: Sure, I can. W-E-I-S-H-E-R.

19 THE COURT REPORTER: Thank you.

20 THE WITNESS: David D. Weisher.

21 BY MS. CHARLES-COLLINS:

22 Q. Okay. Any other medical records that you
23 reviewed?

24 A. Let's see. Dr. James Nelson.

25 Q. Anyone else?

1 A. For that report?

2 Q. Uh-huh.

3 A. That was -- I think that was enough. That's
4 all I need.

5 Q. Is that all you reviewed?

6 A. For the report?

7 Q. Yeah.

8 I'm just trying to make -- I know you said
9 that that was enough, but I'm just saying, I need you to
10 tell me whether or not any other medical records, besides
11 Dr. Weisher and Dr. Nelson, did you review any others for
12 this December report?

13 A. Oh, I -- did I -- this is December 22nd --
14 that was it.

15 Q. Okay.

16 A. That's all I had.

17 Q. All right. Any other documents that you
18 reviewed for that report for the December 2014 report?

19 A. Well, I have cases of prior studies of
20 concussive incidents. Now, when I say cases, I have,
21 maybe 12, if I can describe the size, milk box sizes of
22 cases in my files.

23 Q. Okay.

24 A. Both --

25 Q. Go ahead.

1 A. Both here and in New York.

2 Q. Okay. But specifically as to this case, and
3 this December 22nd, 2000 (sic) report, what -- what
4 cases, what studies did you rely on in order to render
5 your opinions in this report?

6 A. I've had another case where an umbrella went
7 over, and I think it was in St. Thomas, and injured an
8 invitee, a guest.

9 Q. Is that something that you relied on in
10 drafting this December 22nd report?

11 A. I only rely on my background and experience.
12 I really don't need much, too many references, because
13 I've handled many similar cases.

14 Q. Okay. So when you -- when I asked you what
15 you relied on, and you talked about the 12 milk box sizes
16 of prior studies, did you rely on any of those prior
17 studies in rendering the opinions in your report dated
18 December 22nd, 2014?

19 A. Well, I relied on the fact that it gave me
20 more documentation that the Marriott was on notice from
21 prior -- prior incidents on the island, where individuals
22 were injured.

23 Q. Which Marriott?

24 A. I don't recall.

25 Q. Okay. And tell me, specifically, what

1 documents you relied on that gave you more information
2 that the Marriott, when it was on notice of these -- of
3 similar incidents?

4 A. It's just that I handled prior cases where
5 this type of incident has occurred, not just with brain
6 injuries, but injuries, bodily injuries.

7 Q. Okay. I understand that. But you rendered
8 opinions in a report in this case, and I'm asking you
9 specifically what you relied on. And if you relied on
10 information from case studies, or you said you have
11 documentation. I need to know what that is?

12 A. Well, let me tell you what I do rely on. Not
13 only on the papers that I've published and the
14 presentations that I have made through -- throughout the
15 United States, Canada, and England, I relied on the
16 studies I made in testing every type of protective head
17 gear in the world, from 1980 to the present time.

18 I relied on my independent testing of my own
19 products, that are now the leading provider of head gear
20 in the United States, in the sport of soccer, and
21 basketball, and other sports.

22 There's just so much that -- that I have
23 available, and within my background, that it doesn't take
24 much for me to evaluate a case like this. I can do a lot
25 of it if you just give me the facts, I could actually

1 write a report without looking at any documents.

2 Q. This case does not involve any type of head
3 gear; correct?

4 A. No. It involves, though, an impact to the
5 brain, which I've been dealing with hundreds, if not
6 thousands of incidences of -- from 1980 to the present
7 time.

8 Q. And this case does not involve any type of
9 sports injury from basketball, soccer, any other kind of
10 sport; correct?

11 A. Doesn't matter.

12 Q. That's not my question.

13 A. I know it doesn't.

14 Q. Okay. I know it doesn't matter.

15 A. No. It has nothing to do with the sport. It
16 just has to do with an impact to the brain, which is
17 similar, identical to sports injuries.

18 Q. Okay.

19 A. So when you asked me those other extraneous
20 questions, they're all interrelated. So, one cannot
21 be -- the injury in this case cannot be isolated from the
22 injuries that cause the -- cause -- causation of a
23 concussive, or subconcussive brain injuries.

24 Q. And what authority do you have to make that?
25 What are you relying on to make that statement?

1 A. I -- it's hard to answer your questions,
2 because it -- it just tells me that you have not done
3 your homework with reference to concussive blows to the
4 brain.

5 Q. I have not asked you a question about
6 concussive blows to the brain.

7 A. And what is -- and what is available.

8 Q. What I've asked you --

9 MS. BENTZ: What --

10 MS. CHARLES-COLLINS: -- is based on the
11 statement that you've made -- Karin, don't
12 interrupt.

13 Based on the statement that you have just
14 made, I'm asking you what authority, what treatise,
15 what standard, what medical literature, what have
16 you --

17 THE WITNESS: Oh.

18 BY MS. CHARLES-COLLINS:

19 Q. What are you relying on to make those
20 statements?

21 MS. BENTZ: Okay.

22 MS. CHARLES-COLLINS: My understanding of --
23 has nothing to do with my question.

24 THE WITNESS: I will tell you. I will tell
25 you --

1 MS. CHARLES-COLLINS: So can you answer my
2 questions.

3 MS. BENTZ: Hold on, hold on. I am objecting
4 to the form of the question; it's compound,
5 argumentative, now you need to --

6 MS. CHARLES-COLLINS: What is the
7 authority --

8 MS. BENTZ: -- you need to allow the Witness
9 to finish his answer.

10 MS. CHARLES-COLLINS: That's an -- is there
11 objection to form?

12 MS. BENTZ: No. You're not allowing the
13 Witness to finish his answer.

14 MS. CHARLES-COLLINS: Because he's not
15 answering my question.

16 MS. BENTZ: He did answer. He -- you said,
17 what did he rely on? And he relies on his 44 years
18 of experience, and he's trying to explain that to
19 you.

20 MS. CHARLES-COLLINS: That's not the question
21 I asked. I said what specific authority, not your
22 experience, not what you know, not what's in --
23 what specific written authority, peer-reviewed, or
24 otherwise authority.

25 THE WITNESS: There you go.

1 MS. BENTZ: Well, I didn't understand the
2 question.

3 MS. CHARLES-COLLINS: I'm not going to look
4 through those.

5 THE WITNESS: You don't have to. I'm giving
6 it to you.

7 MS. CHARLES-COLLINS: No.

8 THE WITNESS: Those are the authorities.

9 MS. CHARLES-COLLINS: You are in a
10 deposition.

11 THE WITNESS: I'm giving you the authority.

12 MS. CHARLES-COLLINS: Karin --

13 THE WITNESS: You have access to everything
14 that I have.

15 MS. CHARLES-COLLINS: Karin, please instruct
16 your Witness to answer the questions that are being
17 asked at this deposition. I am not here to look
18 through his documents.

19 MS. BENTZ: Well, that's kind of what you
20 asked him. You want to know what he relied on.
21 He's handed you what he's relying on as part of his
22 file. You asked him to produce his file; I don't
23 know what else to say, so --

24 MS. CHARLES-COLLINS: I need him to answer my
25 question. My question is not to provide me

1 documents; my questions require a verbal answer.

2 So my question is, Dr. Abraham, if you have things
3 in there that you're saying that you relied on,
4 tell me what it is that you relied on.

5 MS. BENTZ: Here, you can go through
6 everything specifically that you relied on,
7 that's -- now the question -- just so I understand
8 it, because I didn't understand your first
9 question, Attorney Charles.

10 MS. CHARLES-COLLINS: Okay.

11 MS. BENTZ: Was -- what written authority did
12 he rely on in forming his expert opinion --

13 MS. CHARLES-COLLINS: Uh-huh.

14 MS. BENTZ: -- of December, whatever.

15 MS. CHARLES-COLLINS: Well, that was the
16 original question. My question now, was, he went
17 back to talking about -- when I asked about sports,
18 that a sport's injury is similar or identical to
19 the injuries alleged in this complaint. And I want
20 to know what authority he's relying on for making
21 that opinion.

22 MS. BENTZ: The sports injury, or this
23 injury?

24 MS. CHARLES-COLLINS: The opinion he just
25 made that they are similar, or identical.

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1 MS. BENTZ: Okay.

2 MS. CHARLES-COLLINS: A sports injury is
3 similar or identical to the injuries alleged in
4 this complaint.

5 MS. BENTZ: Can we take a time out, so I
6 can --

7 THE WITNESS: No, I can answer the question.

8 MS. BENTZ: No, I want to go use the ladies
9 room, then, you can look through all this stuff.

10 THE WITNESS: I got it, take me five minutes
11 to go through.

12 MS. BENTZ: Okay.

13 THE WITNESS: What do we do?

14 MS. BENTZ: Then, I will be right back. Can
15 we go off the record, please.

16 THE WITNESS: Oh, you're going to be right
17 back?

18 MS. CHARLES-COLLINS: We can.

19 THE VIDEOGRAPHER: Going off record at 11:54
20 a.m.

21 (At about 11:54 a.m. recess.)

22 (At about 12:01 p.m. proceedings reconvened.)

23 THE VIDEOGRAPHER: Back on the record at
24 12:01 p.m.

25 BY MS. CHARLES-COLLINS:

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1 Q. Dr. Abraham, when we took a break, you were
2 going to identify for me what authorities you relied on
3 to make this statement that concussive injuries in sports
4 are similar or identical to the injuries alleged in this
5 lawsuit?

6 A. Sure.

7 So, okay. You want me to just bring them out
8 one at a time?

9 Q. Yeah. You can just name them?

10 A. All right. Here's one, the "Ways the Brain
11 is Injured."

12 Q. And who is that written by?

13 A. It's published by braininjury.com.

14 Q. Okay. Can we take that from you? Can we
15 keep that?

16 A. Sure you can.

17 Q. Okay.

18 A. Do you want that?

19 Q. Can you please mark that as Exhibit 3.

20 (Deposition Exhibit 3 marked.)

21 THE WITNESS: Here's another one. Here's
22 from Mother Jones. Soccer -- what -- "This is What
23 Happens to Your Brain When You Get Kicked in the
24 Head."

25 BY MS. CHARLES-COLLINS:

1 Q. Okay. We'll mark that as 4.

2 (Deposition Exhibit 4 marked.)

3 THE WITNESS: "Football Physics: The Anatomy
4 of the Hit."

5 MS. CHARLES-COLLINS: We'll mark that as 5.

6 (Deposition Exhibit 5 marked.)

7 THE WITNESS: There's one, a "Subconcussive
8 Head Impacts and a Method for Significantly
9 Absorbing, Reducing and Dissipating Those Forces."

10 MS. CHARLES-COLLINS: Okay. And we'll mark
11 that as Exhibit 6.

12 (Deposition Exhibit 6 marked.)

13 THE WITNESS: Here's one,
14 "sportsconcussions.org."

15 BY MS. CHARLES-COLLINS:

16 Q. We'll mark that as 7. What's the name of the
17 article?

18 A. "First On-Field Soccer Impact Study."

19 Q. We'll mark that as 7.

20 (Deposition Exhibit 7 marked.)

21 BY MS. CHARLES-COLLINS:

22 Q. Are there any others?

23 A. I should have brought all of them. My -- my
24 other cases, here's -- okay. Don't need that.

25 Here's, "The Brain from Top to Bottom." You

1 want that?

2 MS. CHARLES-COLLINS: I will mark that as 8.

3 (Deposition Exhibit 8 marked.)

4 THE WITNESS: These are my only copies, so --

5 MS. CHARLES-COLLINS: Okay.

6 THE WITNESS: I don't want them left here.

7 MS. BENTZ: And I don't have copies, so

8 we'll --

9 MS. CHARLES-COLLINS: We'll figure it out.

10 MS. BENTZ: Let's just get them with the
11 transcript.

12 THE WITNESS: Here's some more of -- "The
13 Brain From Top to Bottom," is the --

14 (Deposition Exhibit 9 marked.)

15 BY MS. CHARLES-COLLINS:

16 Q. Okay. I will just put a 9 on here.

17 A. This is --

18 Q. This will be 9, this is "Symptoms, Treatments
19 and Causes of Depression."

20 A. So here's one publication: "Recommendation
21 for Diagnosing a Mild Traumatic Brain Injury: A National
22 Academy of Neuropsychology Education Paper." Okay.

23 Q. This is Number 10.

24 A. Did I give you one on concussion by
25 Wikipedia? Did I give you that one, yet?

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1 Q. No.

2 A. If you don't have it, I will give you one.

3 (Deposition Exhibits 10 and 11 marked.)

4 BY MS. CHARLES-COLLINS:

5 Q. And that would be Number 11.

6 A. Another one, my only copy, so I'm not even
7 going to give you this. This is the War -- "The
8 Invisible War on the Brain." Published in National
9 Geographic, February 2015.

10 Q. Okay. We'll make a copy of that article, so
11 that you can keep the magazine.

12 A. When are you making them?

13 Q. I'm sure they have a copy machine right here
14 to make a copy of that.

15 A. I will ask her to do that for me.

16 (Deposition Exhibit 12 marked.)

17 BY MS. CHARLES-COLLINS:

18 Q. Okay. All right. And we'll make that Number
19 12. So -- I'm sorry.

20 A. My next, is: "Dynamics of Falls and Blows,"
21 it's just an expert from a paper.

22 Q. And who wrote that paper?

23 A. I don't know. You can get the --

24 Q. Where did you -- where did you get this from?

25 A. I do a lot of research, and certain parts of

1 papers I extract.

2 Q. So this actual document that's titled
3 "Dynamics of Falls and Blows," this is something that you
4 typed?

5 A. No, I didn't type -- I extracted that from
6 another paper.

7 Q. Copied and paste it?

8 A. Yes.

9 Q. Okay. So these are not your words?

10 A. Nope.

11 Q. Do you know where you got this information
12 from?

13 A. No. From some of the research I do.

14 This is -- or papers that I review, and
15 certain parts of papers are important to me.

16 Here's "Biomechanics of Sport Concussion: A
17 Quest for the Elusive Injury Threshold." This guy is
18 very -- the author's -- very well-known on this, so --

19 Q. And that will be Exhibit 14. Exhibit 13 was
20 "Dynamics of Falls and Blows", and Exhibit 14 is
21 "Biomechanics of sports concussion: Quest for the
22 Elusive Injury Threshold."

23 (Deposition Exhibits 13 and 14 marked.)

24 THE WITNESS: Here's some Data Analysis from
25 a paper -- oh, here, "Forced Induced on the Brain

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1 by Hitting Soccer Balls."

2 Here's another one.

3 BY MS. CHARLES-COLLINS:

4 Q. Okay.

5 A. Okay.

6 Q. And that will be Number 15.

7 A. Okay.

8 Q. Anything else?

9 A. Here's one on G-forces.

10 Q. That will be number 16.

11 (Deposition Exhibits 15 and 16 marked.)

12 THE WITNESS: Here's one on Concussion Facts.

13 MS. CHARLES-COLLINS: That will be number 17.

14 (Deposition Exhibit 17 marked.)

15 BY MS. CHARLES-COLLINS:

16 Q. And do you know where this one came from,
17 Concussion Facts, it doesn't have any type of header or
18 footer.

19 A. No. No.

20 Q. Did you put this together?

21 A. Yeah. It's extracted.

22 Here's another one, "An Analysis of Maximum
23 Vehicle G Forces and Brain Injury in Motorsports
24 Crashes."

25 Q. And that will be number 18.

1 (Deposition Exhibit 18 marked.)

2 MS. BENTZ: You made the mistake of asking
3 him that question.

4 MS. CHARLES-COLLINS: Okay. I'm okay.

5 MS. BENTZ: Okay. Good.

6 MS. CHARLES-COLLINS: I'm fine.

7 BY MS. CHARLES-COLLINS:

8 Q. Is that it?

9 A. I also discussed the case with Dr. Share. He
10 did a medical evaluation of Ms. Redler.

11 Q. Okay. In relation to your December 22nd,
12 2014 report?

13 A. Yes.

14 Q. Okay. Dr. Share?

15 A. Yes. I -- I -- he's a someone I've known for
16 many years.

17 Q. Did he treat Ms. Redler?

18 A. I know he evaluated her, and then he
19 recommended that she see certain medical specialists for
20 further treatment.

21 Q. And how did you get in touch with Dr. Share
22 to be discussing Mrs. Redler's medical condition?

23 A. We're close friends, and we're on the same
24 case.

25 Q. Okay. Now, of all the Exhibits that we just

1 marked, which start at 3, and end at Number 18, these
2 different articles or excerpts that you have pulled from
3 things that you've read, did you rely on any of these
4 particular documents in rendering your opinions in this
5 case?

6 A. No.

7 Q. Okay. Are there any particular articles, or
8 pieces of articles that you relied on in rendering your
9 opinions on -- in this case?

10 A. There were thousands of articles that I've
11 reviewed over the last -- 1980 to now, is 35 years, that
12 I have reviewed. So as a whole, I take everything that I
13 have reviewed.

14 Q. Uh-huh.

15 A. Rather than rely on one specific article in
16 rendering an opinion. Plus, my own personal experience
17 in -- in discussing cases with doctors, medical doctors,
18 and with actually injured individuals who have
19 experienced and are in the middle of -- the treating -- a
20 treatment for their concussions.

21 Q. And I realize that over the years you've read
22 all these things, but I'm just asking, specifically, as
23 to this December 22nd report, and the opinions that you
24 rendered herein, did you rely on any specific literature,
25 articles, treatises, anything for this particular case,

1 and this particular report?

2 A. I rely on the thousands of documents that I
3 have reviewed. Not one specific one.

4 Q. When you did your inspection, did you have an
5 opportunity to inspect any of the umbrellas by the pool
6 side at the Frenchman's Cove?

7 A. You wouldn't let me.

8 Q. Okay.

9 A. You don't recall that?

10 Q. Is it your opinion that you were not allowed
11 to, or your testimony that you were not allowed to
12 inspect any of the umbrellas at the pool side?

13 A. At the time of my inspection, you wouldn't
14 allow me to do that.

15 Q. Okay.

16 A. And, however, as an invitee, I can do
17 anything. At another -- at another time.

18 Q. Okay. So is it your testimony that on
19 December 12th, on or about December 12th when there was
20 an inspection, where you were present, Attorney Bentz was
21 present, I was present, and Marriott employees were
22 present, that you were not allowed to conduct any type of
23 inspection on umbrellas?

24 MS. BENTZ: I've got an objection to the
25 form, because I don't understand it.

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1 Are you talking about the umbrellas by the
2 pool? Or the umbrella where we were?

3 MS. CHARLES-COLLINS: I asked him if he did
4 an inspection on any of the umbrellas, he said he
5 wasn't able to.

6 MS. BENTZ: Well, your first question
7 was about the --

8 THE WITNESS: No, I never -- I never said --

9 MS. BENTZ: Pool side.

10 THE WITNESS: Don't put words in my mouth.
11 You're putting words in my mouth. That's not good.

12 MS. CHARLES-COLLINS: Okay. So, go ahead.

13 THE WITNESS: Because I have total recall.

14 MS. CHARLES-COLLINS: Good. So do I. So,
15 great.

16 THE WITNESS: So if you have total recall,
17 don't put words in my mouth.

18 BY MS. CHARLES-COLLINS:

19 Q. Okay. So we're going to make this very
20 clear.

21 A. No, you're not making it clear.

22 Q. I said we are going to make this very clear.

23 A. Now we're making it clear. That's good.

24 Q. Did you inspect any umbrellas in relation to
25 your December 22nd, 2014 report? Did you do a formal

1 inspection of umbrellas?

2 A. A formal inspection? I was presented with
3 two exemplar umbrellas that were not the actual umbrella
4 that was involved in the subject accident.

5 Q. Were any of them, the two umbrellas, the two
6 exemplar umbrellas, were any of those umbrellas similar
7 or were the same as the umbrella that was alleged to have
8 caused the injuries in this -- in this case?

9 A. They were not.

10 Q. Okay. What was different from the umbrellas
11 that you saw in December 2014, than the umbrella on the
12 day of the incident?

13 A. That's a very good question. I'm going to
14 answer it in full.

15 Q. Great.

16 A. First of all, you're alleging in your replies
17 to interrogatories --

18 Q. No, that's not my question.

19 A. I'm going to -- I'm giving you a background
20 as to why they weren't --

21 Q. Okay.

22 A. -- the same.

23 Q. Okay.

24 A. And I didn't interrupt you.

25 Q. Okay.

1 A. It was stated at the mediation hearing that
2 Ms. Redler --

3 Q. We don't want to talk about what's at the
4 mediation.

5 A. It was --

6 Q. Mediations are confidential.

7 A. Oh, it's alleged -- it was alleged that
8 Ms. Redler, in spite of the employee taking the umbrella
9 down, that she put it up, again.

10 Q. Okay. My question --

11 A. I am going to give you the answer why it
12 couldn't be the same umbrella.

13 Q. Okay.

14 A. Okay.

15 I attempted at the inspection, to open the
16 umbrella, and I could lift over 50 pounds. I could not
17 lift that umbrella up, and open it without the aid of an
18 employee from the Marriott.

19 So it wouldn't be impossible for her, if
20 that, if that ques -- if that statement is true by the
21 Defendant, to -- for her to put up, open the umbrella,
22 number one. And if that's the case, it would be im --
23 the exemplar umbrellas that you presented to me, were not
24 even close to the umbrella that was blown over, and hit
25 her, causing her permanent brain injuries.

1 Q. Okay. So that's my question. You saw the --
2 you said that you saw photographs of the umbrella from
3 the date of the incident; correct?

4 A. Yes.

5 Q. And those -- that was from the pictures that
6 Mr. Redler took?

7 A. Yes.

8 Q. Okay. Describe for me how that umbrella, in
9 the photos that Redler -- Mr. Redler took, are different
10 from the umbrellas that you saw in December 2014?

11 A. The photograph --

12 Q. Physical characteristics?

13 A. Okay. Well, we know that it -- it looks like
14 an umbrella, and acts like an umbrella. The only
15 difference is, that if Mr. -- Miss Redler was able to,
16 and she would have to, because her husband had a back
17 injury, if she was able to open it, it couldn't be the
18 same umbrella.

19 Q. My question is not that. We're not talking
20 about opening the umbrella, my question is: How do they
21 look different?

22 A. Well, most of the umbrellas look a similar,
23 not identical, because I had two different umbrellas at
24 the time of my inspection, that you said were exemplars,
25 even though they were different from each other.

1 They looked alike. They were different.
2 They were different in the diameter of the pole, they
3 were different in the base, one took a little more force
4 to raise the umbrella than the other, they're not
5 similar. They look similar --

6 **Q. Describe the two umbrellas that you saw on --**
7 **in December, 2014. Describe them.**

8 A. They were two umbrellas that were at the
9 Marriott Hotel, that were alleged to be exemplars because
10 you people stated that you could not find the actual
11 umbrella. It was never produced for me to inspect.

12 **Q. Dr. Abraham, we'll get through this a lot**
13 **faster if you answer the questions I'm asking you.**

14 Describe for me the -- what the two umbrellas
15 that you looked at in December, looked like. I want to
16 know what they looked like?

17 A. Oh, I have a schematic of them, I think, here
18 somewhere.

19 (Discussion held off the record.)

20 THE WITNESS: Here's another one you can use,
21 "Dynamics of Falls and Blows."

22 BY MS. CHARLES-COLLINS:

23 **Q. We'll mark that as Number 19. We have this**
24 **one.**

25 A. Oh, you have that one?

1 Q. Yeah. We have this one.

2 A. Okay.

3 Q. So it's not Number 19.

4 A. I know I have it, it's at the -- I downloaded
5 it from the company itself. The manufacturer of it, a
6 distributor of the company.

7 MS. BENTZ: What are you looking for?

8 THE WITNESS: The Tropicana --

9 MS. BENTZ: That was an Exhibit at a prior
10 deposition; do you want me to pull it up?

11 THE WITNESS: Yeah. That's the one that I
12 have.

13 BY MS. CHARLES-COLLINS:

14 Q. Okay. But what I'm asking you is, to
15 describe for me the umbrellas that you saw in December at
16 the inspection?

17 A. It was in a stanchion. It was an umbrella
18 that had a -- that you open by raising the center portion
19 that controlled all of the arms, and a locking mechanism
20 of -- for once the umbrella was opened. And that's --
21 that's the only thing that was similar to the umbrella in
22 question, because of the allegation that she was able to
23 open up the umbrella.

24 Q. Okay.

25 A. I say it wasn't possible for her to open up

1 the umbrella.

2 Q. Okay. We'll get there.

3 A. And I'm saying that, that the allegation --

4 Q. We'll get there.

5 THE WITNESS: Let me finish.

6 MS. BENTZ: Let him finish his answer.

7 THE WITNESS: The allegation is totally
8 false.

9 BY MS. CHARLES-COLLINS:

10 Q. Okay. We will get there but my -- what --
11 did the umbrellas -- you saw the two umbrellas in
12 December?

13 A. Yes.

14 Q. Did the umbrellas have a canopy?

15 MS. BENTZ: What was -- I don't understand
16 what the canopy is.

17 BY MS. CHARLES-COLLINS:

18 Q. Did the -- did the -- I mean the -- did the
19 stand have a canopy for the umbrella? A covering?

20 A. A covering? You mean, when the umbrella's
21 opened?

22 Q. An umbrella has a canopy, so what --

23 A. Right. Right. When you open it --

24 Q. Right.

25 A. -- the canopy's there.

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1 Q. Yes.

2 A. Yes.

3 Q. Okay. So were both canopies the same?

4 MS. BENTZ: As what?

5 MS. CHARLES-COLLINS: Each other.

6 THE WITNESS: I -- each other? No.

7 BY MS. CHARLES-COLLINS:

8 Q. Okay. Describe them for me.

9 A. Because, one, they both had canopies.

10 Q. Yes.

11 A. But one -- they both were very difficult to
12 raise.

13 Q. Okay. Describe the canopies for me.

14 MS. BENTZ: Okay. Just so I'm clear, and for
15 the record --

16 THE WITNESS: Excuse me.

17 MS. BENTZ: -- we're talking only about the
18 umbrellas now that Dr. Abraham inspected in
19 December.

20 MS. CHARLES-COLLINS: Yep.

21 MS. BENTZ: Okay. Because, just for the
22 record, we never were able to actually evaluate the
23 umbrella that actually fell on the Plaintiff.

24 MS. CHARLES-COLLINS: Never asked him a
25 question about that.

1 THE WITNESS: No, I --

2 MS. BENTZ: I just want to make it clear for
3 the record, because this is a deposition
4 transcript, and --

5 MS. CHARLES-COLLINS: Okay.

6 MS. BENTZ: -- and things --

7 MS. CHARLES-COLLINS: I made it very clear.
8 I'm talking about the umbrellas that you looked at
9 on -- in December at the Frenchman's Cove, 2014.

10 BY MS. CHARLES-COLLINS:

11 Q. Describe the canopies of the two separate
12 umbrellas that you looked at.

13 A. They were -- as you stated, canopies, we'll
14 call them canopies, that were only to block the sun from
15 coming through them.

16 Q. Did they have color?

17 A. Yeah. They had colors. They were in my
18 photographs. Whatever colors they had.

19 Q. Okay. What photographs would those be? The
20 ones to your report?

21 A. The ones I took.

22 Q. Okay.

23 A. They would describe the colors. I think they
24 were vomititious something or other.

25 Q. Vomititious?

1 A. Yeah. I don't think they were colorful.

2 Q. All right. So the photographs, you're saying
3 in your report, that's marked as Exhibit 2, is this what
4 you've -- you identified Exhibit 2 as your complete
5 report. Are those the umbrellas?

6 A. No. I was -- there was also a videotape
7 that --

8 Q. Okay. But I'm asking just about the
9 photographs that are attached to Exhibit 2 of your
10 December 21, 2014 report. Are those pictures of the
11 umbrellas that you inspected in December 2014 at
12 Frenchman's Cove?

13 A. I don't recall the colors.

14 Q. My question is: Are those pictures that are
15 attached to your report, December 22nd, 2014, pictures of
16 the umbrellas that you inspected at Frenchman's Cove?

17 A. No.

18 MS. BENTZ: Can we have the Bates Numbers,
19 please, just for the record.

20 MS. CHARLES-COLLINS: Bates Stamp Number.

21 THE WITNESS: Yes, okay.

22 MS. CHARLES-COLLINS: Three -- hold on for a
23 second, Dr. Abraham, let me just clarify the
24 record. Bates Stamp Numbers 360, 361, 362, 364.

25 THE WITNESS: Oh.

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1 BY MS. CHARLES-COLLINS:

2 Q. Are those pictures of the photos -- I mean
3 are those pictures of the umbrellas that you inspected at
4 Frenchman's Cove on -- in December of 2014?

5 A. They look like them, but I don't recall the
6 colors.

7 Q. Okay. All right. Karin, do you want to take
8 a break?

9 MS. BENTZ: Yeah.

10 MS. CHARLES-COLLINS: We will take a break
11 just so --

12 THE VIDEOGRAPHER: Going off record at
13 12:28 p.m.

14 (At about 12:28 p.m. recess.)

15 (At about 12:45 p.m. proceedings reconvened.)

16 THE VIDEOGRAPHER: Back on record at
17 12:45 p.m.

18 BY MS. CHARLES-COLLINS:

19 Q. Okay. Dr. Abraham, in this case you were
20 retained to -- you were retained to -- to review the
21 facts and allegations in this case, and asked to render
22 certain opinions; correct?

23 A. Yes.

24 Q. Okay. What I'm going to ask you to do is, to
25 list for me all of your opinions in this case, and then

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1 we will go back and talk about each one.

2 A. Uh-huh.

3 Q. So can you do that for me?

4 A. Sure.

5 Q. Okay.

6 A. Can I have the report from the other expert?

7 MS. BENTZ: You have it right here. Is that
8 it?

9 THE WITNESS: No, the other expert there.

10 MS. BENTZ: Okay. Here you go.

11 THE WITNESS: Okay. Thank you. Just bear
12 with me; I'm just trying to find my report.

13 MS. CHARLES-COLLINS: Okay. Which one? The
14 December 2014?

15 Here you go.

16 THE WITNESS: Yeah. Yeah.

17 May I borrow it?

18 MS. CHARLES-COLLINS: Yeah.

19 THE WITNESS: Thank you.

20 I'm having a problem with this report, and
21 one of the reasons is, that the photographs that we
22 have here are usually listed in my report, and I
23 don't have a page of photographs listing these --
24 as a schedule, listing these photographs. So I
25 don't know where these photographs came from.

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1 BY MS. CHARLES-COLLINS:

2 Q. That was the report as it was provided to us.

3 A. Okay. But that's not the umbrellas that I
4 inspected.

5 Q. But that was the report that was provided to
6 us with those photos?

7 A. I'm just saying to you, that--

8 Q. Okay.

9 A. -- that's not the umbrellas that I inspected.
10 The umbrellas that I inspected, have copies of those
11 photographs with me on my iPad. So, I just want to put
12 that on the record.

13 Q. Okay.

14 A. All right. Let's go --

15 Q. So do you know where those photos came from?

16 A. I have no idea right now. Right now, I
17 don't.

18 Q. Okay.

19 A. I can't recall.

20 Q. All right.

21 A. Of course I took a lot of photographs when I
22 was down there --

23 Q. Okay.

24 A. -- for a number of things.

25 Okay. Let's go over my report.

1 Okay. On page three of my report, it says --

2 Q. Let me just clarify something for the record,
3 Dr. Abraham, we're talking about your December 22nd, 2014
4 report; correct?

5 A. Yes.

6 Q. Okay. Go ahead.

7 A. A, the management and loss prevention
8 individuals at the Marriott, they were on notice that the
9 steel pole of the umbrella struck Ms. Redler's head.

10 Q. Okay. What other opinions do you have?

11 A. Okay. My opinion, also, is that she was
12 knocked unconscious, and she received a concussion
13 without any question.

14 There's no question as to the fact that she
15 received a concussion; okay.

16 Q. Uh-huh. And can you do me a favor,
17 Dr. Abraham, if, what you're telling me is contained in
18 your report in one of the --

19 A. You want to just skip over?

20 Q. -- numbered paragraphs -- no, no, no. No,
21 no. I just -- so that I can make reference to it.
22 Because -- so if you're talk -- I know that when you just
23 said about management --

24 A. Right.

25 Q. -- should have known that was 14 a --

1 A. Correct.

2 Q. -- correct?

3 A. Now I'm going to 14 b.

4 Q. Okay.

5 A. Okay. They have known for decades, that the
6 stanchions that they were using, were not sufficient to
7 maintain, as I stated in my report, the integrity of an
8 open umbrella when strong breezes, or when wind was
9 occurring, which they knew in this specific instance
10 prior to the accident.

11 But knowing that they -- the question is, as
12 a hotel, on an international basis, and I've stayed in
13 their hotels all over the world, are -- knowing that, why
14 would they order the umbrellas with stanchions when they
15 knew, or should have known that there are alternatives
16 safer methods of securing the umbrellas, so that the
17 inherent risk of anything being blown over would have
18 been reduced, or eliminated.

19 At the same time, since they knew that this
20 could occur -- while I'm on this subject, they could have
21 easily closed the umbrellas, and wrapped a tie around it,
22 so it would remain shut. These ties cost, I guess, a few
23 cents. You can get them in -- I get them in Home Depot,
24 a large plastic ties, that you need a special tool to
25 open it up. And they could have gone around, and just

1 put these ties around all the closed umbrellas so no one
2 would open them.

3 Next, while I'm on this, they had an
4 individual go around, and these -- a witness in this
5 case, and it was brought up, previously. The witness
6 states that he spoke with Ms. Redler and told her that
7 the -- warned her.

8 Now, who was this witness? The employee of a
9 Marriott. He was formerly a head of housekeeping, and
10 now he became a bellboy. So now he has the position of a
11 bellboy. I don't know what the requirements were, or
12 what his training was, but he -- what it does demonstrate
13 is, that the management of the Marriott Hotel at that
14 facility, were not properly trained in safety warnings,
15 and instructions. Because the so-called alleged warning
16 that he stated he gave the -- Ms. Redler and the family,
17 was not a proper warning. He never stated that there was
18 a possibility of any danger that she would be hit in the
19 head. She -- they never gave her what the consequences
20 would be with reference to opening it up or leaving it
21 open. And there's no evidence that she raised the
22 umbrella by herself.

23 And I'm stating to you, with safety
24 engineering and scientific certainty, that it would have
25 been impossible for her to raise the so-called exemplar

1 umbrellas that you stated were similar, or identical to
2 the one that fell over, which had a steel, or a big round
3 steel pole, supporting the umbrella.

4 Okay. By the way, I describe that in 14 c,
5 that she wouldn't be able to lift it up.

6 D, the -- knowing that injuries do occur to
7 guests at hotels from simple strain -- a strained ankle,
8 strained ligament, slip and fall cases. There was no one
9 that, based upon the -- this specific incident, that was
10 trained in handling injuries to the head, or brain.

11 It was open and obvious to me that there was
12 no one there that would recognize the problem that
13 existed at the time she was injured, and that she needed
14 immediate medical attention.

15 You people are calling the injury that she
16 received as a mild concussion. What you're not privy to
17 is the fact that, in my opinion, and the opinion of
18 experts in the field, there's no such designation as a
19 mild concussion.

20 A concussion is a concussion is a concussion,
21 and that's what it is. And it varies from person to
22 person, based upon the extent -- based upon one as the
23 impact they receive. Their DNA, and other associated
24 characteristics relating to their physiology.

25 The Marriott Hotel, up to j, on page four,

1 14 j. Failed to follow the standard of care throughout
2 the Caribbean and the Islands, and throughout the United
3 States. When there is a strong breeze or wind by the
4 pool or on the beach, all umbrellas must be closed and
5 stay closed. The fact that they're even inferring that
6 Ms. Redler raised the umbrella as a number of other
7 people did, other invitees did, is really not an excuse
8 for them to have bellboys, individual employees working
9 around the pool, to make sure and verify that no one open
10 up their umbrella, and if they did they would be
11 immediately closed, with a warning.

12 And at the same time, in addition to being
13 closed, they could have been removed from their
14 stanchions and stored somewhere until the danger of these
15 breezes blowing over the umbrellas ceased.

16 The choice of the umbrella, the original
17 purchase of the umbrella and stanchion, also demonstrated
18 the inability, and in-ept training of the management at
19 the hotel, of the areas involving the safety and welfare
20 of the invited guests.

21 The -- it was open and obvious that the
22 stanchions and umbrellas would not be a safe
23 instrumentality to be used for guests, because breezes
24 and gusts can occur at any time. Sometimes without
25 notice.

1 The fact that an individual was injured --
2 and I've handled plenty of cases against the Marriott,
3 and in Europe and throughout the United States; okay?
4 Management of Marriott knows, or should have known, knew
5 or should have known that if an individual is injured by
6 an instrumentality, the evidence is extracted and saved,
7 and placed in an area not available to anyone else, and
8 preserved. It wasn't done in this case. And as a
9 result, I was presented with two umbrellas that were not
10 similar, or identical to the umbrella that severely
11 injured Ms. Redler.

12 And on top of it, was not given an
13 opportunity to fully evaluate the severity of her injury,
14 based upon what did result from the impact of the
15 umbrella to the side of her head. And it also injured a
16 part of her body, at the same time.

17 Knowing that, I did want to give you one
18 other fact. Yeah, this is something I did rely on, by
19 the way.

20 **Q. Okay.**

21 A. Based upon what is alleged, here. I don't
22 have a staple, but you can put this together. There's an
23 author to this, as well. The author is, Selim Benbadis,
24 MD, he's the chief editor, and this is a medical -- I
25 didn't copy the whole article. What I did was copy what

1 related to the allegation, here, if I might just put
2 it -- read it.

3 That the findings -- they ran a brain MRI,
4 and a CT scan, and we'll go over that in the middle, and
5 they found abnormal findings. It's called a focal
6 dysrhythmia. And what I would like to do is present this
7 as something that I did rely on. Because this -- what
8 they're claiming here, and as a finding, is clearly, has
9 not been clinically useful in the modern era medicine.

10 **Q. When you say they did a finding, who are you**
11 **talking about, they?**

12 A. The defense in this case. It's stated
13 that -- there was a fall on her head, a head trauma in
14 2009, and they ran a CT scan.

15 **Q. Who ran a CT scan?**

16 A. The medical people when she did have a --
17 that injury, and they ran an MRI.

18 **Q. Right. But these are her doctors?**

19 A. Her doctors.

20 **Q. Okay.**

21 A. But just to present what -- a CT scan and an
22 MRI, can only determine structural changes, and not
23 concussions. Then, you have to use, for example, a
24 functional NMR to determine the condition of the
25 chemistry of the brain, and from that, you can determine

1 the concussive level.

2 And the EEG, when they found abnormal
3 findings of focal dysrhythmia, it's meaningless. But
4 they're making a big deal of it, and it's clearly not
5 clinically useful in the modern era, and it should be
6 considered a pathological finding only when associated
7 with more definite abnormalities. And this is
8 documentation of what I did rely on.

9 Q. Okay.

10 A. And I verified that, also, with Dr. Asher.

11 Q. Okay. So we'll mark that as Exhibit 19.

12 (Deposition Exhibit 19 marked.)

13 BY MS. CHARLES-COLLINS:

14 Q. And does -- Dr. Abraham, does this article
15 that we just talked about, or a portion of the article,
16 relate to a specific numbered paragraph in your report
17 or --

18 A. No, because this was present --

19 Q. Okay.

20 A. -- this was --

21 Q. Just to the doctor.

22 A. -- presented to me well after the fact.

23 Q. Okay. All right.

24 Go ahead with the rest of your opinions.

25 A. Okay. Well, m speaks for itself. Because I

1 was told by Ms. Bentz, okay, the attorney for Ms. Redler,
2 that the Marriott was going to produce the actual
3 stanchion and umbrella for tests to be conducted by the
4 other side. And the -- that Defense failed to produce
5 the actual umbrella and stanchion. For whatever reason,
6 I don't know.

7 Q. When did she tell you? When did
8 Attorney Bentz tell you that?

9 A. Prior to my flying down. And also, oh, when
10 I was down there, she stated I was going to see the
11 actual one, and that -- actually, you were flying down
12 and going to present that to me.

13 Q. Were you told by Attorney Bentz that she was
14 advised that before that inspection, that, in fact, what
15 you would be inspecting were exemplars?

16 A. No.

17 Q. Okay.

18 A. I thought I was going to -- I finally, just
19 prior to going there, I was told that you couldn't find
20 it.

21 Q. Okay. All right. Do you have any -- any
22 other opinions?

23 A. Yes.

24 Q. Okay.

25 A. Okay. I state in n, like Nancy.

1 Q. Uh-huh.

2 A. On page five that it is foreseeable from a
3 risk benefit standpoint, that if it's foreseeable doing
4 a -- performing a risk analysis, that an umbrella and
5 stanchion do not have the -- are not designed to
6 withstand breezes that are known throughout the area, and
7 wind gusts, they should not be used.

8 And there's a standard of care that is
9 followed throughout the United States and throughout the
10 islands. And the standard of care was finally followed
11 during, and after the incident. During the incident they
12 were installing, from what I understand, the
13 stanchions -- they were installing the poles in cement,
14 and they have finally removed all of the umbrellas that
15 were on stanchions, and made them -- the poles
16 permanently embedded in the cement.

17 Q. Okay. Anything else?

18 A. Okay. Yes. That there were no written or
19 oral warnings regarding -- and when I say warnings,
20 regard -- warnings that follow the voluntary -- do you
21 want to go off the record?

22 We're being presented with, I think, dinner.

23 MS. CHARLES-COLLINS: We can go off.

24 Wait. Hold on one second. Finish that
25 thought, though.

1 MS. BENTZ: Why don't you finish that portion
2 of the opinion, and then we'll eat.

3 MS. CHARLES-COLLINS: Okay. Okay.

4 THE WITNESS: You're stating that I'm not
5 going to recall what I stated, and started; right?

6 MS. BENTZ: No, but you're almost done with
7 your opinions; right?

8 THE WITNESS: No. This goes another three
9 hours of this.

10 MS. CHARLES-COLLINS: Okay. Yeah, we have.

11 BY MS. CHARLES-COLLINS:

12 Q. So no written or oral warnings, and you were
13 going to explain to me what you mean by warnings.

14 A. Right, right, right. That follows voluntary
15 ASTM, ANSI, ISO, or statutory warnings, Municipal
16 Consumer Product Safety Commission, those types of
17 warnings that have a signal word, what the risk is, and
18 what the consequence is. They didn't have any of that.

19 So, most of all alleging defective warnings
20 and instructions, which I also state outwardly in my
21 report.

22 Q. Can I ask you one question? You said ASTM,
23 then you said another word?

24 A. ANSI. American National Standards Institute.
25 ISO, which is the International Standards Organization.

1 Q. **Okay.**

2 A. And then the Consumer Product Safety
3 Commission, which is the CPSA.

4 Q. **Okay. Thank you.**

5 A. They have warnings that anybody can copy, and
6 that should have been posted. When they had this
7 problem, they could be placed on stanchions throughout
8 the area where individuals are seated. And they could
9 have placed Ms. Redler, and her family on notice that no
10 way, should she be exposed to open umbrella, because of
11 the risks. The risk can result in permanent injury, and
12 possible death. Because the poles were steel, heavy, and
13 the force was extreme.

14 Now can I get my soup?

15 Q. **How much more do you have as far as listing**
16 **your opinions?**

17 A. Ten more minutes.

18 Q. **Okay.**

19 A. My soup will get cold.

20 Q. **They have a microwave.**

21 A. I don't like anything microwaved.

22 Q. **All right. We will take a break, so you can**
23 **eat.**

24 MS. BENTZ: She likes to be in control; can
25 you tell that?

1 That's why she went to law school.

2 MS. CHARLES-COLLINS: We will take a break.

3 THE VIDEOGRAPHER: Going off record at

4 1:10 p.m.

5 (At about 1:10 p.m. recess.)

6 (At about 1:30 p.m. proceedings reconvened.)

7 THE VIDEOGRAPHER: Back on record at

8 1:30 p.m.

9 BY MS. CHARLES-COLLINS:

10 Q. Dr. Abraham, when we -- before we took a
11 break, we were going through your opinions in this case,
12 so if I could ask you to continue with --

13 A. Uh-huh.

14 Q. -- letting me know what your opinions are.

15 A. Yes.

16 Okay. I'm stating that the impact was
17 extreme because of the design of the pole. The pole was
18 round, and the impact was extremely narrow, in the temple
19 area.

20 And I also go on to state in Paragraph 16,
21 what that part of the brain is responsible for. Okay.

22 And then 17, I state that the testing that
23 was done, and contrary to the Defendant's allegations
24 against me, which state that my testing was not
25 scientific, peer reviewed, published, et cetera.

1 Rather that the testing that was performed by
2 me was performed to demonstrate that the force produced
3 by the steel pole was more than enough to produce a
4 severe concussion. It was severe enough to also produce
5 a subdural hematoma, and actually kill a young child,
6 which didn't happen in this case. And a subdural
7 hematoma wasn't produced, just a severe concussion. But
8 the force was significance.

9 And also I wanted to demonstrate that the
10 fall of the pole was similar to that, or what Mrs. --
11 what Ms. Redler experienced when the pole went over. And
12 she was severely injured. Okay.

13 I also state that Ms. Redler was exposed to
14 an enhanced risk, and hidden danger on page six, top
15 paragraph. The enhanced risk, and hidden danger when
16 known, or should have been known by the Defendants, but
17 hidden from Ms. Redler.

18 I also state in 18 that the Defendant's
19 deviated from the standard of care, that is known
20 throughout the hotel chains, and the protection of
21 invited guests from foreseeable risks, and hidden
22 dangers. And they ignored the safety and welfare of
23 Ms. Redler, which resulted in her injuries.

24 Number 19, I interpreted, if a safety
25 specialist, or an individual experienced in risk

1 analysis, observed the stanchion, and the pole, and the
2 umbrella, they would have informed the Marriott
3 management that the instrumentality was a -- dangerous,
4 and should not be used at the hotel when there were
5 alternative safer methods of a blocking the sun from the
6 guests.

7 Furthermore -- I'm sorry, I can give you this
8 back.

9 (Discussion held off the record.)

10 THE WITNESS: I apologize. I inadvertently
11 put some check marks on the side.

12 BY MS. CHARLES-COLLINS:

13 Q. Oh.

14 A. It was --

15 Q. That's okay.

16 A. I didn't realize what I was looking at as it
17 was -- I got involved with it.

18 Q. That's all right.

19 A. Next, I'd also like to state, that based upon
20 my experience -- is that the report submitted by Paul
21 Marsenison, and cosigned by Amor Camachtcho, Ming Xiao,
22 and Richard Baratta, really, was supposed to be a report
23 that was -- that performed scientific -- scientifically
24 accepted -- a protocol in evaluating the subject
25 umbrella.

1 I have reviewed the report that was issued on
2 April 17th, 2015, as sent to the law firm, to Ms. Smith
3 of Hamilton, Miller & Birthisel of Miami, Florida. Okay.

4 Conclusions. The overturning of the open
5 umbrella was consistent with the effect from a gust of
6 wind.

7 Okay. I have to state with certainty
8 that that conclusion is correct, there was no testing of
9 the umbrella to prove that point.

10 **Q. By who? No testing by who?**

11 A. By the individuals that I -- that co-signed
12 the report with Mr. Marsenisont -- Marsenison.

13 He also concludes that a person sitting in a
14 lounge chair adjacent to the umbrella could be contacted
15 by the umbrella post during overturning. He never
16 performed any testing that was supposed to be
17 scientifically performed, which was alleged was going to
18 be done by the defense attorneys prior to the issuance of
19 the report.

20 **Q. Can you explain to me what you -- I don't**
21 **know what you just meant by that.**

22 A. Okay. He concludes that anyone sitting in a
23 chair adjacent to the umbrella --

24 **Q. Uh-huh.**

25 A. -- could be contacted by the umbrella post.

1 He didn't call it a pole. Umbrella post during the
2 overturning, which is an easy conclusion, but he, in no
3 way, went through any testing, any type of physical
4 testing. Any type of -- any type of testing to prove
5 that point, but it did happen.

6 Q. Yeah.

7 A. So that's easy to conclude. Because in real
8 life, that's what happened.

9 Q. Were you present for his inspection?

10 A. No.

11 Q. Okay.

12 A. Just to reply to that statement, it's usually
13 a courtesy of all the inspections that I go on, that both
14 sides are present. When I say both sides, the individual
15 alleged experts for both sides are present.

16 Number three, the report prepared by Charles
17 Abraham did not meet ASTM E-620 standard practice for
18 reporting opinions of scientific or technical experts.

19 Well, first of all, it doesn't matter what he
20 calls me. What's interesting here is, the ASTM E-620, is
21 a committee that I'm a member of, and I'm the only one
22 that objected to having that even created as a standard.
23 Prior to that time, I have been involved with -- I owned,
24 I started Intercity Testing, a consulting corporation in
25 New York. By the time I sold it in 1988, I had six

1 offices, over 100 Ph.D.s working for me. Full
2 laboratories, we wrote over 15,000 reports in that time.
3 And all of a sudden, out of the clear blue sky, some guys
4 that want to be experts, are creating a standard to write
5 a report.

6 No one's going to tell me how to write a
7 report, and I told them that. And I told them that in
8 writing.

9 It's a voluntary standard. And why he would
10 even bring this up is ridiculous.

11 The testing by Dr. Abraham was not
12 representative of the conditions of the incident as
13 reported. The analysis and conclusions by him, were not
14 based upon accepted principles or methods in a scientific
15 community.

16 What he hadn't done, if he's going to
17 critique me, which he's done very badly, and to the wrong
18 person, is that if there were alternative methods and
19 principles for testing, what are they? They were never
20 mentioned here. So, I don't know what he's talking
21 about, and I -- I know that he doesn't know what he's
22 talking about.

23 Q. Okay. Any other opinions that you have?

24 A. Yes.

25 Q. Okay.

1 A. Okay. On Mar X 075, whatever that stands
2 for.

3 **Q. It's the Bates Stamp Number for the --**

4 A. Right. Okay. So I said that correctly, I
5 hope.

6 The paragraph at the bottom, he states that
7 the umbrella canopy was approximately ten feet in
8 diameter. We measured the overturning force for the
9 umbrella by positioning the stand as 12 pounds, which
10 wasn't much. I estimate it to be about ten pounds.

11 But he says the weight of the entire umbrella
12 was 35 pounds. The umbrella base weighed 77 pounds.
13 Okay. And that, therefore, we concluded that because the
14 overturning force was less than the weight of the
15 umbrella alone, the umbrella overturned while it remained
16 in the umbrella stand. Okay.

17 And I don't know how important that is, but
18 the fact is, he didn't do any testing on the actual
19 umbrella, and he doesn't even mention that in his report.

20 He says -- he says -- what he says, the
21 weight of an identical umbrella and stand. Totally
22 false. Totally false. I stated that. I stated that
23 because it would be impossible for Ms. Redler to raise
24 the subject umbrella, which was supposed to be similar --
25 similar or exactly the same as the one that was in

1 question.

2 And then he reviews my report. Okay. He
3 states that a gust of wind would apply to distributed
4 forces onto the canopy, whereas a test that I performed,
5 applied a concentrated load on the pole of the umbrella.

6 What was I to do? I mean, I'd say other
7 things. Blow on the umbrella so I'd get an implied
8 force? I couldn't blow that much. And I could -- and I
9 could -- there weren't enough fans located in the
10 Marriott Hotel to create the gust of wind that came by.
11 And that I failed to address that there was any
12 relationship between the two. What he fails to see is
13 that it was a qualitative method of demonstrating what
14 occurred, and the forces involved. Okay.

15 Simply put, a distributed load such as would
16 occur due to wind, would have a different characteristic,
17 in terms of pushing and rotating the pole. What is the
18 difference whether if you rotate the pole, come straight
19 down, and nothing happens to the pole, it stays in one
20 place and just comes down? The fact is, the steel pole
21 hit her in the temple, temporal area, and she received a
22 concussion. Okay?

23 He says, then he comes to conclude
24 Dr. Abraham's testing was not applicable to the
25 conditions of the subject accident. What he doesn't

1 understand is the real world, and how we go about
2 testing, and creating tests to demonstrate what happens
3 to individuals when they're injured.

4 I have over 43, maybe 45 patents, 46 patents
5 now. I create products, I create testing methods.
6 Create testing protocol for these products to prove the
7 integrity of what -- and the capability of what I invent
8 will do. There were a lot of products I invent. There
9 was no testing available. What testing is available
10 here?

11 There's nothing written that -- of any
12 protocol that I should follow; and whatever protocol I
13 should follow, if there was anything that was published,
14 it would be voluntary suggestions, and not statutory.

15 I concluded that it took less than ten
16 pounds. He's saying it took 12 pounds. It is important?
17 It's not important. It's insignificant whether it took
18 ten pounds, 12 pounds, the gust of wind would have pushed
19 something over, even if it was more than 12 pounds.
20 Okay?

21 MS. BENTZ: I'm just going to state for the
22 record that this report, of course, hasn't been
23 allowed by the Court. So, to the extent that this
24 report is not allowed in evidence pursuant to my
25 motion that's going to be filed --

1 MS. CHARLES-COLLINS: Which motion is that?

2 MS. BENTZ: These opinions are being -- the
3 one I have to write --

4 MS. CHARLES-COLLINS: Yeah.

5 MS. BENTZ: -- are -- did you put my mike
6 back on?

7 Okay. These opinions that he's now rendering
8 are -- will not be necessary but, go ahead.

9 THE WITNESS: Well, they should be more of a
10 reason why a report like this is so nonscientific.
11 I wouldn't admit into the garbage dump.

12 I would never hire an individual like this
13 for my firm, that I ran for 28 years. This
14 individual is in-ept, in my opinion. And that's on
15 the record.

16 MS. BENTZ: It is now.

17 THE WITNESS: Then -- then, he goes on to
18 have the gall to say at the bottom of X 076.

19 BY MS. CHARLES-COLLINS:

20 Q. Uh-huh.

21 A. At the bottom, Dr. Abraham's stated in
22 paragraph 16, that the testing performed by the
23 undersigned Dr. Abraham, did demonstrate that the force
24 produced by the steel pole was more than enough to
25 produce a severe concussion, a subdural hematoma and

1 actually kill a young child.

2 I did that say, and that's the possibility,
3 because I have experienced individual impact forces that
4 produced those types of injuries.

5 I didn't take any measurements with regard to
6 the location or the magnitude of the force. Again, it
7 was demonstrative, more than anything else.

8 Okay. And, then, it goes on to my testing,
9 that the umbrella was open when it came -- came down.
10 And his testing suggested that when the canopy was open,
11 contact with the shaft of the umbrella would be different
12 compared to that of the canopy, when the canopy was
13 closed. As such, his testing of tipping over the closed
14 umbrella onto a piece of tile, did not comply with the
15 facts of the case.

16 Well, what I didn't get -- and I could have
17 actually created the facts of the case, but I couldn't
18 get a volunteer employee from the Marriott to put their
19 head down in case -- in place of a tile. So, that didn't
20 work. So, I couldn't realistically reproduce everything.
21 So I used tile instead of an individual's brain.

22 BY MS. CHARLES-COLLINS:

23 Q. Could you have used a dummy?

24 A. What would a dummy do? A dummy wouldn't
25 fracture. A dummy --

1 Q. You don't need it to fracture --

2 A. Well.

3 Q. -- you just need it to demonstrate a human
4 figure. If you're doing the testing, why couldn't you
5 have used a dummy?

6 A. Well, you might be correct, but that's
7 incorrect.

8 I could have drawn a face on the tile. I
9 could have done that, too, I didn't do that, I'm not an
10 artist.

11 Now he also said that, additionally,
12 Dr. Abraham did not perform any scientific analysis, or
13 reference any peer reviewed literature to establish the
14 amount of force required to produce a severe concussion,
15 a subdural hematoma, or actually kill a young child. It
16 should be noted that a CT scan of Ms. Redler's head by
17 Dr. Jeffrey Guller at Schneider's General Medical Center
18 on the day of the incident, reported normal results with
19 no evidence of hemorrhage infarct mass effect, or extra,
20 extra axial collections. There was no subdural hematoma
21 reported.

22 That's all the -- a CAT scan would do. As I
23 stated previously, as I determined structural changes in
24 the brain are not -- and would not recognize or determine
25 a -- that there was a concussion. The doctor determined

1 that it was a concussion without any question.

2 And then he concludes that I violated in his
3 last paragraph of 77, I did not meet ASTM 620 which is
4 the voluntary standard created by mostly industry, and
5 not individual consultants like myself.

6 **Q. Any other opinions you have in this case?**

7 A. He also -- yes, he also states that the
8 engineering -- biomechanical engineering aspects of the
9 case were under the responsible charge of Ming Xiao
10 and -- but we don't know what the biomechanical aspects
11 of this case were, because he didn't mention him
12 throughout the report. So, I don't know what this
13 individual knew or didn't know, and what his opinion and
14 what Dr. Xiao's opinion was.

15 The other happens to be the -- the
16 neurologist, Ph.D., Dr. Spangenberg, Spangenberg, which
17 did 14 more tests on this individual, and if you --

18 MS. BENTZ: Who is Spangenberg?

19 THE WITNESS: Spangenberg.

20 MS. CHARLES-COLLINS: You tell me.

21 THE WITNESS: Karen Spangenberg-Postal.

22 MS. BENTZ: Oh, Postal. Dr. Postal.

23 THE WITNESS: I said Dr. Postal.

24 MS. BENTZ: That's how I know her.

25 No, no. You said Spangenberg.

1 THE WITNESS: Well, she's keeping her name --

2 MS. BENTZ: I was, like -- that if that's a
3 new expert, you're not getting her in.

4 THE WITNESS: She's keeping her name, her
5 maiden name.

6 MS. BENTZ: Oh, okay. Thanks, Carl.

7 THE WITNESS: You got it? You got that?

8 MS. BENTZ: I was on PC there.

9 THE WITNESS: When I was sticking up for her.
10 That's the only thing I am spicking -- sticking up
11 for.

12 She says -- con -- concludes -- very
13 interesting, that Ms. Redler didn't have a
14 concussion, because she was not rendered
15 unconscious. 99 percent of individuals that
16 receive a concussion, are not rendered unconscious.
17 I mean, right away, right from the beginning, I'm
18 saying to myself, what is she even involved in this
19 case for, unless she's being paid a lot of money by
20 Defendants to say anything that would make the
21 defense more credible in defending the case.

22 BY MS. CHARLES-COLLINS:

23 Q. What do you -- what authority do you base
24 your opinion that 99 percent of people who have a
25 concussion, are not rendered unconscious?

1 A. Well, one is the medical -- if you go through
2 medical literature, you'll see that. And when you depose
3 Dr. Asher, he'll state that close to 99 percent or more,
4 or over 99.

5 Q. I don't want to know what Dr. Asher said; I
6 want to know what -- what authority are you relying on?
7 Is this just your opinion, or is this -- you have medical
8 literature, specific medical literature, specific
9 documents, specific standards that you are relying on,
10 that say 99 percent of people who have a concussion are
11 not rendered unconscious?

12 A. There is medical literature available -- I
13 didn't bring it in. It's in my cases, in my -- what do
14 you call it? Milk box cases that I save all my
15 references, but I'll get -- I mean if you need that, I'll
16 get it for you. But I think that doctors -- Dr. Asher
17 will have all this available.

18 I also discussed that fact with him.

19 He stated, I was also correct in my statement
20 with reference to the fact that she's making that
21 statement, which is so -- well behind times, that it's
22 just that it's more evidence that she really is not the
23 appropriate expert for this particular case.

24 Q. When you spoke with Dr. Asher, was that prior
25 to your December 2014 report? Before -- prior to your

1 writing it.

2 A. It's -- no, I -- it was after I received
3 this, which was December -- well after December 25th. I
4 don't recall when I did receive this, but I read it, and
5 I couldn't believe what I was reading here.

6 Q. So is your answer that your conversation with
7 Dr. Asher was subsequent to you drafting your
8 December 22nd report?

9 A. Yes. But you asked me what my opinions were.

10 Q. Right. No, but I'm asking you a follow-up
11 question.

12 A. Yeah, yeah. It was. It was.

13 Q. Okay.

14 A. She now finds there's no valid credible
15 evidence of cognitive impairment, even though she has
16 problems recalling. She has -- if I recall, she has to
17 jot everything down. There's a lot that she doesn't
18 remember what she has to do on a daily basis, even though
19 she has her job back.

20 Q. And how do you know that?

21 A. It was told to me by Dr. Asher.

22 Q. So you have no personal knowledge that she
23 has the cognitive impairment that -- and when I say she,
24 I'm talking about Jessica Redler?

25 A. Yeah. Because I'm the -- I -- I speak to

1 Dr. Asher quite a bit, and so he keeps me posted as to
2 what his findings were.

3 And then she went through all of these tests,
4 when I think, at the beginning somewhere, she was not a
5 candidate to go through all of the testing. Yet, she
6 continued to test Ms. Redler through 14 or 15 different
7 aspects of her analysis.

8 I mean she even gives her, Ms. Redler
9 gives -- I'll call them Dr. Postal -- indications of
10 problems that she has, as there -- and if you know
11 anything about a concussion, especially, after two years
12 that she still has these problems -- we know it's,
13 essentially, based upon what I know, and what I deal with
14 teenagers and young children who are injured, for an
15 extensive period of time, that the problem is permanent.

16 **Q. And just so the record is clear, Ms. Redler**
17 **is neither a teenager nor a young child; correct?**

18 A. No, but she has symptoms -- for example, of
19 that -- of football players. All the players that have
20 been injured, where the injury has extended, and the
21 injury, the brain deteriorated as a function of time.

22 Okay. She has headaches, she has sleep
23 issues, all that relates to a concussive problem that
24 persists, and that's why her injury -- and we all
25 understand two things -- one thing.

1 You can have two people side by side, both
2 identical, different DNAs, both identical in weight, both
3 get hit by a concussive blow. One walks away like
4 nothing happened. And the other one's unconscious. We
5 know this. People vary.

6 We -- we -- you -- Ms. Redler was hit and
7 that's the deal you got. You got this woman, with her
8 DNA. Her DNA may not be as good as somebody else's, but
9 her injuries, in my opinion, are permanent, and you'll --
10 this can be verified by the doctors that have evaluated
11 her.

12 **Q. Okay. And is that your personal opinion,**
13 **that her injuries are permanent?**

14 A. That's my opinion, based upon my background
15 and experience in working with, and evaluating sport
16 injury -- teenagers and adolescents involved in impacts
17 to their brain or body, that resulted in concussions.

18 **Q. Any other opinions that you have in this**
19 **case?**

20 A. Yes. My opinion -- and this will be verified
21 by the medical specialist in this case, from my
22 understanding you have a neuropsychiatrist who has
23 extensive experience, unlike Miss Post -- Dr. Postal, in
24 dealing with brain injured people, is a significant
25 difference; and Dr. Share, who has observed and worked

1 with several thousands brain injured people.

2 Q. So what was your opinion?

3 A. My opinion is that I agree with Dr. Share,
4 that there is permanency, here. And that she'll -- and
5 that will affect her quality of life. And as a good
6 possibility, it will get worse as a function of time.

7 Now, with reference to other areas, here, I
8 stated that the warnings and instructions were defective.
9 So it doesn't matter, what -- what Ms. Redler did, or
10 didn't do, or what Mr. Redler did or didn't do. And I
11 gave you alternative, easier, inexpensive methods of
12 securing the umbrellas that could have easily been done,
13 and it wouldn't have cost the Marriott Hotel more than
14 three cents, four cents an umbrella to secure them.
15 Because they were already paying the bellboy to go
16 around, so it wouldn't have cost them any more for the
17 bellboy to just to secure them.

18 Again, there was spoliation of evidence that
19 I never got to see, or examine, or test the actual
20 umbrella. And I stated that the allegations by the
21 Defense, especially any prior injury from 2009, is
22 ridiculous with their allegations. They don't even
23 relate to the evaluation of the issues in the subject
24 case.

25 Q. Anything else?

1 A. Last, but it has to be checked out, your --
2 she's a psychologist. Dr. Postal is not licensed in the
3 state of Massachusetts in the area of the specialty of
4 treating brain injured patients. I don't think there's a
5 license for that, and I don't think -- her license may
6 be from another state in neuropsychology; that has to be
7 checked. I'm not sure. It's not my responsibility to
8 check that out. That's enough.

9 **Q. Is that it? Or is that -- you're just saying**
10 **that's enough because you're tired?**

11 A. No. I thought that's enough that we can go
12 home, now.

13 **Q. No. We're going to go through every single**
14 **one of those.**

15 MS. BENTZ: How much more -- how much more do
16 you have?

17 MS. CHARLES-COLLINS: Oh, we're going to be
18 here for a while.

19 MS. BENTZ: Then, I need to take a bathroom
20 break.

21 MS. CHARLES-COLLINS: Okay.

22 THE VIDEOGRAPHER: Going off record at
23 2:04 p.m.

24 (At about 2:04 p.m. recess.)

25 (At about 2:15 p.m. proceedings reconvened.)

1 THE VIDEOGRAPHER: Back on record at

2 2:15 p.m.

3 BY MS. CHARLES-COLLINS:

4 Q. Okay. Dr. Abraham, let's go over a couple
5 things before we go through your opinion.

6 When you did your inspection, describe for me
7 what tools or materials you used, you brought with you to
8 do the inspection?

9 A. I -- I'm -- I brought Force Gauge with --
10 Force Gauges with me. It -- when I looked at what I was
11 going to do, I figured I'd just go through a qualitative
12 demonstration of -- of the -- how the umbrella fell, and
13 essentially demonstrate through the breaking of a tile,
14 and the impact that a brain would experience, or had in
15 coming in contact with a small portion of the
16 circumference of the pole, the steel pole.

17 And so I was told that it was an exemplar of
18 the actual one, and I was shown two completely different
19 umbrellas. And I say completely different, they weren't
20 identical. So if they're completely different from each
21 other, how can both of them be exemplars? It was
22 impossible.

23 Then, what happened -- which was interesting,
24 is, I think one of the employees helped me push up --
25 push the umbrella up so, and lock it in place so the

1 umbrella would be in the same position that the actual
2 umbrella was at the time of the incident.

3 What was interesting is, I couldn't open it
4 and push it up myself.

5 Q. Okay. We will get to that in a second.

6 So --

7 A. And so what I was able to do with the help
8 is, get the first one up and, then, I think I released
9 the umbrella, and then went to the other umbrella, and
10 knocked them both over and determined, approximately,
11 what the force -- the force would be to just start
12 pushing it over.

13 Q. Okay. So you brought force gauges, you said
14 with you; correct?

15 A. Yes.

16 Q. Did you use those in your testing?

17 A. No.

18 Q. Okay. And then you said that you had a tile.
19 Describe the tile for me?

20 A. It was a simple ceramic tile that I picked up
21 where I was staying. I found that in the area where the
22 workers were located, and it was just wide enough to set
23 between two arms of a chair, or table. I forgot where it
24 fell down to. And where I direct the pole to hit the --
25 approximately, the center of the tile and fracture them,

1 which took a sufficient force.

2 How much force? I don't know. But it wasn't
3 important to know the exact force. First of all, I
4 wasn't working with the exact umbrellas, and second of
5 all, it was demonstrative, not for the exactness of the
6 -- and forces.

7 Because no one knows -- no one knows what the
8 actual force was that produced her -- a concussion. No
9 one knows.

10 Q. Can you -- did you have more than one piece
11 of tile?

12 A. I had another piece, but it was a smaller
13 piece, and the smaller the piece is, it's very difficult
14 to demonstrate that it will fracture, because it takes a
15 real high force for a small piece to fracture.

16 If I knew there were two umbrellas, I would
17 have tried to find another larger piece of tile.

18 Q. Can you describe for me the dimensions of the
19 piece of tile that you actually used in the testing?

20 A. It's in the photographs, and I would have to
21 look at it to estimate the approximate size. I didn't do
22 it for size. I want -- just wanted it wide enough so
23 the -- it would demonstrate the impact that one
24 experiences.

25 Q. And you say -- when you say the photographs,

1 you mean the photographs that you took?

2 A. Yes.

3 Q. Okay. And when I say you took that --

4 A. I also -- I think I -- did I -- I don't
5 recall whether I took videotapes or not, but --

6 Q. Okay. At the inspection --

7 A. Yes.

8 Q. -- in December?

9 Okay. And what -- when you look at the facts
10 in this case, or the facts that are alleged in this case,
11 what is the tile supposed to represent, factually?

12 A. Well, it -- even if I had a dummy there, it
13 wouldn't -- wouldn't represent Ms. Redler.

14 What it does is just demonstrate the impact
15 that takes place, and the fact that we have tile, and it
16 takes a significant amount of force to fracture the tile.

17 And, here, we're dealing with steel. We're
18 not dealing with a plastic or wood coming down. So,
19 evidently, the -- the pole is significantly hard. It's
20 heavier than the 35 pounds, and it just demonstrates what
21 Ms. Redler experienced when she was hit, and nothing
22 more.

23 Q. Okay.

24 A. Nothing more.

25 Q. So you would agree with me, that the tile is

1 different, the characteristics of the ceramic tile are
2 different from the characteristics of the human being,
3 and the body tissue of a human being?

4 A. Oh, I was just thinking of other things,
5 like, there are heads that can be hit that don't even
6 feel it. We know that. So --

7 Q. So your answer is?

8 A. My mind wanders a little.

9 Q. That's okay.

10 A. You got to ask your questions faster so my
11 mind doesn't wander.

12 Q. All right. Well, you got to answer my
13 questions faster, so your mind doesn't wander.

14 A. Okay. Anyhow, we know a significantly
15 different than the brain, but to me -- it's only a
16 demonstrative test. It's not an actual test. And
17 remember I said previously that I couldn't get a
18 volunteer employee from the Marriott Hotel to volunteer,
19 putting their head there. You recall that?

20 So since I didn't get that volunteer, I just
21 substituted something else. Perhaps, the ceramic tile
22 was similar to some of the employees heads there.

23 Q. If you were doing the testing, why didn't you
24 bring a volunteer?

25 A. Because the people I know are normal.

1 Q. Okay. You also -- did you use anything else
2 besides the tile, your hand? Did you use any other --
3 and the umbrella?

4 A. Yeah, I think I let part of it come down on
5 my wrist, but not the total pole, because it could have
6 fractured my wrist.

7 Q. Did you use any chairs in the testing?

8 A. I think I put the tile on the arms of two
9 chairs.

10 Q. And were those regular, like, seated chairs,
11 or were those lounge chairs?

12 A. Well, I have to look at the photographs.
13 I -- I have to look at the photographs to be exact.

14 Q. Okay. And those would be photographs that
15 you took?

16 A. Photographs that I took.

17 Q. Okay. How much is the -- there were two
18 different umbrellas; right? There was a tan umbrella; do
19 you remember that?

20 A. That I --

21 Q. Uh-huh.

22 A. It was slightly --

23 Q. In December.

24 A. It was like --

25 Q. Like a khaki color.

1 A. I described it better than you did.

2 Q. Okay. What is your description?

3 A. It was a vomititious color. It wasn't really
4 an attractive color.

5 Q. Okay. And then there was an orange umbrella?

6 A. Yeah, also affected by the sun.

7 Q. Okay. All right. So were the tan color,
8 khaki colored umbrella, how much did that weigh?

9 A. I didn't -- I didn't -- I don't recall
10 whether I weighed it or not. It was not important to me.

11 Q. Why wasn't the weight of the umbrella
12 important?

13 A. Not -- not -- because we have a plaintiff in
14 this case, Ms. Redler, who wound up with a concussion.
15 Does it matter what it weighed?

16 What matters was, to me, was that it wasn't a
17 type of instrumentality that should have been placed
18 anywhere without being placed in the cement. Because of
19 the foreseeable risk of being exposed to an umbrella
20 coming over.

21 Q. How do you measure force? The force of
22 something?

23 A. Oh, mass times the acceleration -- I come --
24 measure it with a Force Gauge. I can measure it with an
25 accelerometer. I can measure them with a number of

1 different instruments. I have them all.

2 Q. Okay. But you didn't have any of those with
3 you?

4 A. Because the conclusion was, in the real
5 world, she wound up with a concussion.

6 Q. Okay.

7 A. Does it matter what it weighed?

8 Q. I don't know, you tell me.

9 A. It doesn't matter what it weighed.

10 Q. Okay.

11 A. Because it was a dangerous instrumentality.

12 Q. How much did the stanchion weigh?

13 A. I forgot. I think your -- if I look at
14 your --

15 Q. No. From your -- your testing, we're talking
16 about your testing.

17 A. Oh, I didn't -- I didn't -- I don't think I
18 weighed the stanchion.

19 Q. Okay.

20 A. None of that was important, because
21 everything was defectively designed for its foreseeable
22 use, and foreseeable misuse.

23 Q. Okay. Do you know -- or what was the wind
24 speed on the day of the incident?

25 A. No one knows. It was predicted, it can go

1 from eight to 12 miles an hour, to gusts of 51-52 miles
2 an hour.

3 Q. And where did you get that information?

4 A. It was presented by the Defense during a
5 meeting. It was 18 miles an hour, with gusts up to 51
6 miles an hour.

7 Q. And was -- did you know that prior to doing
8 your report, or is this something subsequent to?

9 A. Subsequent to.

10 Q. Okay.

11 A. And it wasn't important. The fact is, it
12 came over, and it was foreseeable that the wind gusts
13 were going to be there.

14 Q. Okay. You are on your tablet, or your iPad.
15 Can you tell me what you're looking at?

16 A. I am trying to find the photographs from the
17 inspection, so I could actually answer your questions.

18 MS. BENTZ: Do you have your video with you?

19 THE WITNESS: No.

20 MS. BENTZ: Okay.

21 BY MS. CHARLES-COLLINS:

22 Q. Have you turned those photos over?

23 A. Yes.

24 Q. Okay. You can close that for right now. We
25 will get back to that.

1 A. Go ahead.

2 Q. All right. But I need you to pay attention
3 to me --

4 A. I do, I'm --

5 Q. -- because you said your mind wanders.

6 A. I'm multi-tasking.

7 Q. No. What I'm going to ask you to do --

8 A. You don't like me when I multi-task?

9 Q. No. I need you to focus on me.

10 A. You're sounding like my wife.

11 Q. You should be used to it, then. Get you in
12 gear.

13 All right. Let's go through your opinions.
14 Do you have a copy of the -- of your December report in
15 front of you?

16 A. It's okay. It's -- hasn't been five minutes,
17 I'll recall what I said.

18 Q. Okay. All right. In your report in
19 Paragraph seven, you say that one must be able to lift
20 over 60 pounds in order to lift the umbrella, and place
21 the pin through the holes to hold the umbrella in the
22 open position. What is the basis for that opinion?

23 A. Because I attempted to take your exemplar
24 umbrella and reopen it, and I couldn't do that. I needed
25 the aid of one of the employees that was there. And both

1 of us were able to get together, get it up sufficiently,
2 to lock it in place.

3 Q. Which umbrella was that?

4 A. Well, it depends --

5 Q. Of the two?

6 A. If you faced away from the building where you
7 were standing, it was on the left.

8 Q. So was that the -- the tan one, the one that
9 you called vomititious?

10 A. That's a good description, yes.

11 Q. Okay. And where do you get the number?
12 Where do you get the 60 pounds. You're very specific
13 about that. Where does that come from?

14 A. Yeah. I know what I'm capable of lifting,
15 and I couldn't lift it.

16 Q. Okay. So, but what -- did you measure
17 anything with regards to that umbrella for you to come up
18 with 60 pounds?

19 A. I -- the fact is that -- well, only because I
20 know what my maximum capability is. There are times that
21 I work out at home and down here, and I know what I can
22 lift. And when I couldn't lift it -- and we have this
23 Ms. Redler, who was alleged to have lifted and opened the
24 actual umbrella, I -- how anyone can state that with
25 certainty, knowing that it takes this kind of force to

1 lift the exemplar umbrellas, it's highly improbable that
2 she did anything.

3 Q. So, in essence, this is really your opinion,
4 based on your limitations, that you need to be able to
5 lift over 60 pounds to be able to open that umbrella?

6 A. Well, this is a scientifically correct
7 statement relating to whether she opened it or not.

8 Q. Based on what scientific principles or
9 standards do you come to the conclusion that you have to
10 be able to lift over 60 pounds?

11 A. The fact that I couldn't lift it, and it took
12 two men to raise the umbrella, and you're claiming that
13 she alone was able to reopen the umbrella after the
14 employee closed it. Someone has to be fabricating this
15 story.

16 Q. Do you know what Ms. Redler's abilities are
17 with regards to lifting?

18 A. I -- I will state with certainty not meeting
19 her in person, I'm willing to bet my whole fee on this
20 particular statement, that she wasn't capable of lifting
21 the umbrella that I lifted.

22 Q. And you based that on what?

23 A. Based on my experience through a lifetime,
24 and working out -- and knowing what my wife, for example,
25 who works out all the time, can lift, and she's strong,

1 versus what I can lift.

2 Q. Is it your opinion, that because your wife
3 can't lift over 60 pounds, that Ms. Redler can't lift
4 over 60 pounds?

5 A. I can --

6 MS. BENTZ: I am going to object to the form
7 of that because --

8 THE WITNESS: How can you relate the two
9 people?

10 MS. BENTZ: Carl, let me finish.

11 MS. CHARLES-COLLINS: That's what I'm asking
12 you.

13 MS. BENTZ: I'm objecting -- I'm objecting to
14 the form of that, because you're not talking about
15 lifting it over your head. Are you talking about
16 lifting it up, or are you talking about lifting
17 60 pounds?

18 MS. CHARLES-COLLINS: I am talking about what
19 he's talking about.

20 THE WITNESS: Yeah, I'm --

21 MS. CHARLES-COLLINS: So I'm asking you -- I
22 have asked you about Mrs. Redler. This is about
23 Mrs. Redler, and you're saying that Mrs. Redler,
24 with scientific certainty, cannot lift over
25 60 pounds. And I want to know, what basis do you

1 have for that opinion?

2 MS. BENTZ: I'm going to object to the form
3 of that question.

4 MS. CHARLES-COLLINS: Okay.

5 MS. BENTZ: Are you asking him, can
6 Ms. Redler lift 60 pounds over her head? Or can
7 she just lift 60 pounds? Is that what you're
8 asking?

9 MS. CHARLES-COLLINS: I am asking him with
10 relation to the opinion that he just made, that she
11 cannot open this umbrella because you have to be
12 able to lift over 60 pounds in order to lift the
13 umbrella. He doesn't say over your head, behind
14 your back, over your nose, he doesn't say anything.

15 His report says, you have to be able to lift
16 over 60 pounds. That's what he says. So I want to
17 know, what basis you have for saying with
18 scientific certainty that Ms. Redler cannot lift
19 over 60 pounds?

20 THE WITNESS: All right. That's a good
21 point.

22 The inference is that we're lifting over our
23 head, because that's where the pin was located.

24 BY MS. CHARLES-COLLINS:

25 Q. Okay. So what's your scientific basis, or

1 **whatever basis you have for saying -- for rendering an**
2 **opinion that Mrs. Redler could not lift over 60 pounds**
3 **and, therefore, could not open this umbrella?**

4 A. First of all, there was no indication in her
5 background that she worked out, lifted weights, and that
6 she was a smaller person, much smaller than I am. And
7 doesn't have the arm strength that I have with reference
8 to what I can lift. And it would be open and obvious to
9 anyone in the real world, to conclude that in no way
10 could she in any way open the umbrella and put the pin in
11 place.

12 Q. Okay. So you're just -- that's just your
13 **opinion. You have no scientific basis for that?**

14 A. There is no peer reviewed article on this --

15 Q. Okay.

16 A. -- opinion.

17 MS. BENTZ: He's just saying it's common
18 sense.

19 MS. CHARLES-COLLINS: Great.

20 THE WITNESS: Yeah.

21 BY MS. CHARLES-COLLINS:

22 Q. **Is it common sense?**

23 A. It's common sense with -- based on
24 experience. And -- and there's a scientific certainty
25 associated with it, because of the amount of force that's

1 required, and the location where that force has to be
2 exerted to get the pin in place.

3 Q. How much force is required?

4 A. Over 60 pounds.

5 Q. How do you know that?

6 A. Because I -- I needed help from an employee
7 to complete it.

8 Q. Okay.

9 A. And I couldn't lift it.

10 Q. Okay. But just because you couldn't lift it,
11 how does that -- how do we know that Ms. Redler couldn't
12 lift it?

13 A. I said I'm willing to bet my total fee, and I
14 will return everything if she's capable of lifting
15 over -- and putting that --

16 Q. We're not here to make wagers; we're here to
17 figure out what --

18 A. But I'm --

19 Q. -- scientific basis is for your opinion.

20 A. That's a good scientific offer.

21 Q. All right. We can move on.

22 A. Thank you.

23 MS. BENTZ: Just let them argue, she can open
24 it, Carl. It's fine. The Jury will never believe
25 it.

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1 BY MS. CHARLES-COLLINS:

2 Q. How much does she weigh?

3 A. I don't recall.

4 Q. How tall is she?

5 A. She's well under six feet.

6 Q. Okay. You know she used to take karate all
7 the time? Supposedly. She was a karate person?

8 A. Yeah, I was a brown belt. We don't lift
9 weights in karate.

10 Q. I understand that, but you get strength from
11 being in karate?

12 A. You don't get any strength.

13 Q. Yes, you do.

14 A. You learn to move.

15 Q. And she also was -- she said that she would
16 go to the gym all the time; do you under -- do you know
17 that?

18 A. Yes. And the fact is -- but she didn't lift
19 weights.

20 Q. How do you know that?

21 A. Because I know. She's -- no, no woman runs
22 in there like -- short -- she's a short lady. She's not
23 going to run in there and start lifting weights above her
24 head.

25 Q. Really?

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1 A. No, it doesn't happen.

2 Q. Okay.

3 A. And I've been member -- I've been a member of
4 a lot of different gyms.

5 MS. BENTZ: No, I object to that, because I
6 can lift over a certain amount over my mind, but
7 it's not 60 pounds.

8 MS. CHARLES-COLLINS: I can lift more than
9 that over my head.

10 THE WITNESS: You can lift over 60 pounds
11 over your head?

12 MS. CHARLES-COLLINS: I sure can.

13 THE WITNESS: You might hang from 60 pounds,
14 a bar, but I don't believe you can lift 60 pounds
15 with one hand over your head.

16 BY MS. CHARLES-COLLINS:

17 Q. Who said she was using one hand?

18 A. You used, even two hands, you couldn't lift
19 60 -- I was using two hands.

20 Q. We'll move on from there.

21 MS. BENTZ: We're never going to agree on
22 that.

23 MS. CHARLES-COLLINS: No.

24 THE WITNESS: I'm going to bring a 60-pound
25 weight to Court.

1 MS. CHARLES-COLLINS: Good.

2 THE WITNESS: And the first thing I am going
3 to do is before I get on the stand, I'm going to
4 ask you to lift it.

5 MS. BENTZ: The most I ever got, 20 pounds,
6 or 25.

7 THE WITNESS: That's it. That's -- by the
8 way, that is normal.

9 MS. BENTZ: I'm old. When I was younger.

10 BY MS. CHARLES-COLLINS:

11 Q. All right. Okay. Let's move on. Let's go
12 to --

13 A. I'm laughing at you.

14 Q. You are?

15 A. Yes. I think it's cute.

16 Q. Oh, isn't that special.

17 Okay. So the factual allegations that you
18 have in the report, did those come from the complaint?

19 So, for example, do you have the report -- in
20 Paragraph 12, where you say her brain injury has
21 significantly affected the quality of her life. Where
22 did you get that type of information?

23 A. Because I know about brain injuries, and
24 that's what happens. Is that their quality of life is
25 affected for the rest of their lives, not just -- it's

1 not a temporary thing.

2 Q. Okay. All right. When you say that the
3 testing that you did, was demonstrative, tell me what
4 that means, because you said demonstrative, and
5 qualitative as opposed to something else. Tell me what
6 you mean by the testing that you performed?

7 A. In this field of being a consultant, there
8 are many times that a test protocol are not created for
9 the specific products.

10 Q. Uh-huh.

11 A. And, for example, if I was the manufacturer,
12 and I worked with manufacturers, a lot of manufacturers
13 in making a product safer.

14 The manufacturer of this particular product
15 would have -- knowing where the end use application would
16 have been in this case, in the islands, would have tested
17 the stanchion and the umbrella, and determined what wind
18 forces it could withstand prior to being knocked over.

19 Q. Uh-huh.

20 A. And the management of the hotel should have
21 requested this data prior to -- prior to ordering it, and
22 using the -- using the product, the umbrella at their
23 facility.

24 Q. What -- what are you relying on to say that
25 they, in fact, had that duty to do that?

1 A. Oh, because you do, and no matter what
2 product you order for use in application by --
3 applications by the invitees, the guests at the hotel,
4 you have to make sure that the product that you order,
5 and expose the invitees to, is fail-safe.

6 What that means is, that for all foreseeable
7 uses and foreseeable misuses, that product will not in
8 any way, pose any risks to any of the guests. They did
9 not do that in this case. They just ordered the
10 umbrellas. Just to get umbrellas, one of the reasons
11 they just ordered that is because management was never
12 taught, or trained in the area of risk analysis, or
13 safety, or safety engineering, warnings and instructions;
14 they're all in-ept.

15 Q. Okay. What do you base that on?

16 A. Everyone that --
17 What?

18 Q. That -- that last statement --

19 A. Oh, why don't you look.

20 Q. -- that they were never trained in risk
21 management, that they're in-ept. What do you base --
22 what basis do you have for making that opinion?

23 A. You never let me complete my sentence --

24 Q. Okay. Sorry. Go ahead.

25 A. -- even though, you are -- you are correct,

1 because you foresaw what I was going to say.

2 So I will accept your interruption.

3 Q. Thank you.

4 A. Okay. The evidence is open and obvious to
5 me, because not only have I been involved with many other
6 cases against the Marriott Hotel chain, but in many areas
7 throughout the country and Europe, but I know in this
8 case, based upon the events that took place, where we
9 take an individual that's a head of housekeeping, making
10 him a bellboy, and then have him go around issuing
11 warnings that he knows nothing about, to guess on hazard,
12 and enhanced risk posed against all, Ms. Redler and
13 other -- all people there, a hidden danger and, you know,
14 allowing this bellboy, who has no background, no training
15 whatsoever, to run around and do these things and still
16 if they were still open, why he didn't maintain that they
17 remain shut, or remove it, if Ms. Redler wanted it open
18 again.

19 Q. Who's this bellboy that you keep referring
20 to?

21 A. The name is mentioned --

22 Q. Where?

23 A. -- during a meeting. The open meeting that
24 we had, where a presentation was made.

25 Q. Are you talking about at the mediation?

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1 A. Yeah. I don't recall whether it was a
2 mediation or not. I know there was a presentation by the
3 Defense, that I was able to get exactly every word that
4 was said.

5 MS. BENTZ: What?

6 MS. CHARLES-COLLINS: Is he referring to the
7 mediation?

8 THE WITNESS: Yes.

9 MS. CHARLES-COLLINS: Okay. So don't talk
10 about what happened in the mediation.

11 THE WITNESS: Well, I have to, because
12 they're claiming --

13 MS. CHARLES-COLLINS: You cannot. It's
14 confidential. What happens in the mediation is
15 confidential.

16 BY MS. CHARLES-COLLINS:

17 Q. Do you know outside of the mediation who this
18 bellboy is?

19 A. If I may have -- I might know if -- just bear
20 with me for a minute.

21 Q. Okay.

22 A. By the way, off the record.

23 (Discussion held off the record.)

24 BY MS. CHARLES-COLLINS:

25 Q. All right. Back on the record.

1 A. Unlike New York.

2 Q. Okay.

3 A. Wait, wait, wait one second.

4 I don't have it here.

5 Q. Okay.

6 A. And I don't have the name.

7 Q. That's fine.

8 And you were saying that he doesn't have the
9 background or the training, this bellboy. What do you
10 know about his background and training?

11 A. Well, if you know that he was a head of
12 housekeeping, you know that he wasn't a physicist, and he
13 wasn't a safety engineer. He wasn't a professional
14 engineer, and he was competent in being head of
15 housekeeping. And head of housekeeping has different
16 responsibilities than going out and explaining to guests,
17 why they must keep it closed.

18 Q. You're certainly making assumptions about his
19 educational background and his background, in general,
20 because you have no idea what -- anything about this
21 bellboy; isn't that correct?

22 A. No.

23 MS. BENTZ: Well, I'm going to object to the
24 form of that, because that -- just, I think he's
25 referring to the deposition of the guy. So --

1 THE WITNESS: Yeah.

2 MR. BENTZ: I mean, I don't think he's making
3 a complete assumption, but you can answer that.

4 THE WITNESS: Yeah, I think he doesn't have a
5 college education.

6 I'm not belittling him. It's just the fact
7 that management has allowed that, and you don't do
8 that without proper training of an employee. He
9 doesn't need -- he doesn't have to be a scientist.
10 You train these individuals. The fact that he was
11 head of housekeeping shows that he has capability
12 of doing more than just housekeeping. And -- but
13 they never trained him to do the job properly.

14 BY MS. CHARLES-COLLINS:

15 Q. What is your basis for saying that he did not
16 receive proper training for management?

17 A. Based upon the fact that he didn't -- he
18 never presented Ms. Redler with proper and accepted
19 warnings, and instructions.

20 Q. How do you know that?

21 A. Because he never presented Ms. Redler, based
22 upon what I know about Ms. Redler, and evidence in this
23 case, of the consequence of being hit by a steel pole in
24 the head.

25 Q. What duty does he have to do that?

1 A. He could have eliminated that duty, had he
2 tied up the umbrella, or removed it.

3 Q. What duty does he have to want -- to make
4 these warnings, that you're saying that they should have
5 made these warnings, what duty did he or --

6 A. Wait, that he --

7 Q. -- or the Marriott have to make these
8 warnings that you're talking about?

9 A. Well, they had the duty to make -- if you
10 cannot, through technical modifications, changes, or
11 through technical means to eliminate the inherent risks
12 associated with any type of product you're exposing the
13 guests to, then, you have to create warnings. And if you
14 don't create warnings, that is the protocol that is
15 followed. The standard of care that is followed
16 throughout the United States, and through all -- for all
17 of the American hotels located throughout Europe and the
18 far east.

19 Q. What is the standard of care that you're
20 referring to?

21 A. You eliminate the inherent risk.

22 Q. Okay. And where do you get that standard of
23 care from? What authority is that based on?

24 A. The nondelegable duty associated with
25 products.

1 **Q. Okay. Where does that come from?**

2 A. Actually, it's created by -- in the
3 manufacturing protocol -- oh, in the ANSI 9000, any
4 products that's manufactured, for example, in Europe, has
5 to go to an ANSI 9000, one through four, from the best of
6 my recollection, which is the protocol for manufacturing
7 products, you eliminate the risk. If you don't eliminate
8 the risk, either it becomes too dangerous to place in
9 this stream of commerce. If it is, you don't place it in
10 the stream of commerce. If you can rectify it, and
11 reduce those risks with warnings and instructions, you do
12 that.

13 **Q. Did the Marriott manufacture these umbrellas?**

14 A. They didn't have to, because it's not up to
15 the manufacturer to know when the wind gusts are coming,
16 when that -- things have to be closed. What you do is,
17 manu -- the Marriott had the nondelegable duty to make
18 things completely safe.

19 **Q. And where do you get that form from?**

20 A. That's the standard of care that's used
21 throughout the world.

22 **Q. Okay. Where?**

23 A. Every -- every American hotel. You have the
24 nondelegable duty to eliminate all the inherent risks
25 associated with exposing any one of the guests to a

1 foreseeable risk, or injury.

2 Q. And where would I find that standard of care
3 related to every hotel in the world?

4 A. In the -- if -- you can get us a copy, too.
5 In the management -- the Marriott Hotel creates an
6 employee -- a management book that contains all of this.
7 And if you get it, all the chain stores have it. I have
8 it for, like, Walmart, for Target. I'm involved with
9 those stores. I defend them, by the way. So I get all
10 of these manuals.

11 Marriott has that. The Hyatt has it. The
12 Sheraton has it. Every one of these hotels have it. Get
13 me one copy, get me just one copy, I will show you within
14 that management book where they have the nondelegable
15 duty to create a -- a standard of care for every invitee,
16 or guest within that hotel.

17 Q. Right. But you're saying that there's a
18 standard of care, like world wide. So I want to know
19 where that world wide standard -- where can we find that?

20 A. Every hotel. Get it for me for every motel.
21 I don't have them for every hotel.

22 Q. No, you're the one telling me that.

23 A. Yes.

24 Q. I'm asking you.

25 A. Yes. Well, you can get it, because you're

1 representing them. So why don't you get us one of those
2 volumes, and we'll be on an equal basis, and I will show
3 you where your own hotel deviated from their own standard
4 of care.

5 Q. But I'm not here to help you with your
6 opinions. Your opinion is that there's a standard of
7 care. So it's your job to tell me where you get that
8 from.

9 A. Well, I get it from the standard of care that
10 I know about with reference to these hotels. What they
11 have available on -- on the volumes of -- of publications
12 that they have for each manager of every hotel. And,
13 indeed, the chain has a -- a safety manager that oversees
14 the safety of all of these hotels.

15 Q. Okay. Going back to the -- to the two
16 umbrellas that you looked at in December of 2012. Did
17 you measure the length or the diameter of the pole?

18 A. At the time, I was there, I did. I think I
19 have it on some of my photographs, or in the videotape.

20 Q. Of measurements?

21 A. Yeah.

22 Q. Did you record those measurements anywhere?

23 A. No, I -- they're on the photographs, so I
24 didn't have to record them.

25 Q. What do you mean they're on the

1 **photographs -- was there a measurement --**

2 A. Well, I put a ruler adjacent to the diameter.

3 Q. Okay. How many holes or pins are there, that
4 **you -- to hold the umbrella up?**

5 A. Two or three. I don't know the exact; it was
6 not important to know the amount of holes.

7 Q. How high up on the pole was the hole that you
8 **used to hold the umbrella up at the --**

9 A. It was above my head, at about arm's length.
10 It had to be seven, seven and a half feet.

11 Q. In Paragraph 13 of your report, you say once
12 **this stanchion, steel pole, and umbrella moved**
13 **approximately 12 inches off center, the umbrella and**
14 **steel pole fell to the ground with more than enough force**
15 **to produce Ms. Redler's condition. So what do you mean**
16 **by once this steel pole and umbrella moved approximately**
17 **12 inches off center -- what do you mean by that?**

18 A. In other words, if you tip the stanchion and
19 pole to one side.

20 Q. Uh-huh.

21 A. And you moved it ten to 12 inches, it would
22 fall by itself.

23 Q. The pole itself, not the stanchion?

24 A. No, the stanchion stays at the bottom.

25 Q. Okay.

1 A. But it goes over with the umbrella.

2 Q. Okay. And which -- what part of your testing
3 showed that when you do that, it moved -- when it moved
4 12 inches off center, that the umbrella and steel pole
5 were able to fall to the ground with more than enough
6 force to produce a concussion.

7 When we're looking at the video, what will we
8 be looking for in order to determine that that's the
9 testing that you're doing?

10 A. You look at the results of the medicals of
11 Ms. Redler, and you'll see that it's more than enough to
12 produce a concussion to Ms. Redler.

13 Q. Okay. I'm not talking about the medicals?

14 A. Oh.

15 Q. I'm talking about your testing.

16 A. You have to -- you have to relate her injury.
17 It doesn't matter what force I threw it over. I just
18 allowed it to fall down. By just falling down, itself,
19 that was more than enough, that if I measured that impact
20 force, it would be more than -- more than enough to
21 produce a severe conclusion in any normal being.

22 Q. What are you basing that on?

23 A. The experience of impact forces in sports,
24 where individuals get hit by a foot, a knee, an elbow.
25 Head to head, a head to ground, head to a goal post,

1 those are impacts. A -- balls hitting the head have
2 produced concussions, a heading produces concussions.
3 Just to let you know, it doesn't take much to produce a
4 concussion in a person. The threshold of people vary,
5 not -- sometimes significantly, but in this case, just
6 the pole going over was more than enough.

7 Q. How strong would a gust of wind have to be to
8 knock over the -- I'm going to do them separately.

9 How strong a gust of wind would have to be to
10 knock over the tan-colored umbrellas?

11 A. I don't know.

12 Q. What about the orange-colored umbrella?

13 A. I don't know. No one knows. No one was able
14 to test it. You have to take -- you have to put them --
15 to properly do it, to answer your question a little more
16 scientifically, you have to create a wind tunnel, and
17 place the umbrella and stanchion in the wind tunnel and
18 measure that. The amount, the cost involved is
19 horrendous. The question is, was it worth it? The
20 answer is, no.

21 Q. Why wasn't it worth it?

22 A. Because we look at the results of what
23 occurred in a case, and we determine the mechanism by
24 which the accident occurred, and no one knows the exact
25 gusts, that the force of the gust at the time it was

1 blown over.

2 So, no matter what you do in a wind tunnel,
3 it doesn't matter. Because the results in -- demonstrate
4 in really life, that the umbrella went over, and
5 Ms. Redler received a severe concussion.

6 **Q. Couldn't you determine or approximate the**
7 **wind speed, or the wind gusts around the time of the**
8 **accident by looking at historical weather data?**

9 A. No. Because we don't know at the point that
10 the umbrella went over, what the exact wind gust was.
11 What the velocity of the wind per hour was. We know that
12 the reports indicate that it was -- the winds were
13 blowing at 18 miles per hour as an average.

14 What is an average? It could be ten, it
15 could be 30; right?

16 **Q. Right. But then --**

17 A. And then the average is 18, but we don't know
18 at the point that the umbrella went over, what the actual
19 wind velocity was. No one knows. So, it doesn't matter
20 when you are asking me this question, how -- how strong a
21 wind gust does it have to be for the umbrella to roll
22 over, or be knocked over. It's not important. I don't
23 think it's important.

24 **Q. If you're talking -- but if we're talking**
25 **about the wind gust, and how the umbrella fell over, why**

1 wouldn't it be important to this case, cost or not, for
2 you to have done testing in a wind tunnel?

3 MS. BENTZ: Seriously? In St. Thomas?

4 THE WITNESS: Excuse me, are you just asking
5 me these questions --

6 MS. BENTZ: I am going to object.

7 THE WITNESS: -- I'm going to ship that
8 umbrella into the United States.

9 MS. BENTZ: I am going to object.

10 THE WITNESS: Hire a laboratory. We're
11 talking about another \$5- 10,000 if that -- that
12 would be cheap, to have those tests done. And
13 then, for what end? You're going to tell me -- see
14 if I was sitting in your seat, you know, I'd say,
15 you know, Carl, you went through all this expense,
16 \$10- 15,000. You had all these engineers, how do
17 you know what the wind gust was at the time of the
18 incident?

19 Everything you did, all your expenses,
20 they're bull. And I'd agree with you, by the way.

21 BY MS. CHARLES-COLLINS:

22 Q. So why isn't --

23 A. I wouldn't argue with you.

24 Q. Okay. So why isn't what you did with this
25 demonstrative, why isn't that bull?

1 A. Because it's -- someone has to demonstrate
2 what Ms. Redler would have experienced. You have the
3 tile there, you have the tile breaking, and you have the
4 focal point, narrow area of a steel pole coming down.
5 This is what we're demonstrating. This is what
6 Ms. Redler experienced. Who cares how fast it came down?
7 Who cares how -- what wind gusts were coming? We know it
8 came down. We know that --

9 **Q. Okay.**

10 A. We know that there was enough wind. It came
11 down. She was injured. Tell me -- in all sincerity,
12 tell me how much more do we have to demonstrate to show
13 that -- are you going to tell me, you're going to agree
14 with Dr. Postal, she wasn't injured? You got to be
15 kidding.

16 **Q. Is it your testimony that it doesn't matter**
17 **what speed, or what force the pole came down at?**

18 A. It does matter. Because the amount of injury
19 is related to the amount of force that comes down. But
20 we know that she didn't really receive any change in the
21 structure of her brain. We know that she didn't receive
22 a subdural hematoma. She received a concussion.

23 That injury has persisted, the -- the
24 residuals from that injury has persisted for more than
25 two years. Once it goes that far, we know that the

1 residuals are permanent.

2 Q. Okay. Have you ever seen anyone do this type
3 of demonstrative testing that you did with the pushing
4 over of the umbrella, and hitting it on a tile?

5 A. I have to tell you, in all honesty, I do a
6 lot of things have never been done before.

7 Q. Is this one of them?

8 A. And a lot of products. Well, you know why?
9 Because there's nothing -- I have to tell you, I've been
10 through every type of standard. I've been through every
11 type of peer review article. I'm going to tell you
12 something, it's like looking for -- I'm going to tell
13 you, ways to take dogs out, and ways for them to go to
14 the bathroom. Who writes papers on that? No one. Who
15 cares; right? Who cares about an umbrella going over?
16 No one does studies on that.

17 Q. Okay. So this test, this demonstrative test
18 that you did, this is -- you're the only one who does
19 this type -- you're the only one that you know of here,
20 that does this type of test?

21 A. Excuse me. Wait a second. You know what?
22 They might make -- tell -- this call might tell me
23 someone else did it. One second. Let me just tell them
24 I'm in -- oh, let me just -- one second. One second.

25 MS. CHARLES-COLLINS: We can go off the

1 record.

2 THE VIDEOGRAPHER: Off the record at 3:01

3 p.m.

4 (At about 3:01 p.m. recess.)

5 (At about 3:12 p.m. proceedings reconvened.)

6 THE VIDEOGRAPHER: Back on the record at 3:12

7 p.m.

8 BY MS. CHARLES-COLLINS:

9 Q. All right. So we were talking about this,
10 the dropping -- the testing that you did with the
11 umbrella pushing it over, and you were saying that you do
12 a lot of testing that nobody else does.

13 A. Yes.

14 Q. Is this one of those tests?

15 A. Yeah. And one of the reasons you do that, if
16 I might point this out? Because, in the old days, I
17 measured coefficient of friction, in a way that's
18 technically correct without an instrument, and sometimes
19 it's costly to do one test for one case.

20 I mean, eventually -- I mean, I have two
21 instruments that measure the coefficient of friction to
22 the tune of about a \$10,000 investment. But I do a lot
23 of that work. So for -- to doing a wind tunnel -- wind
24 tunnel test, all these kind of force tests, it's not
25 worth it for one product. So what you do is, you create

1 a situation that can demonstrate what happens, since you
2 know what happened already. And you know -- you don't
3 know the exact wind velocity, or when it -- at the time
4 it happened. All you can -- what's left is demonstrating
5 what it looked like at the time of the incident, and
6 that's what I did.

7 Q. Okay. Is that -- the testing that you did,
8 is it repeatable?

9 A. Oh, sure.

10 Q. Okay. And how would -- how would somebody,
11 not you, how would somebody repeat, or recreate those
12 testing conditions?

13 A. You get any tile. Any tile --

14 Q. Uh-huh.

15 A. -- that's large enough. Place it between
16 two -- two chairs or two objects that would hold it, and
17 just let the steel beam come down on it.

18 Q. Okay. And when you wrote your report, and
19 came up with your opinions, were they based on the
20 testing done on both umbrellas, on one of the two
21 umbrellas?

22 A. Both umbrellas.

23 Q. Okay. When you say the umbrella and pole
24 fell to the ground with more than enough force to produce
25 Ms. Redler's condition, how did you determine that from

1 **your testing?**

2 A. Oh, I know from impacts to the head, and the
3 testing I have done with helmets in the past, with
4 accelerometers, and all of the instrumentation of heads,
5 with and without protection, that based upon -- I don't
6 know, between 500 and over 1,000 tests that I've
7 performed over the years, that the -- apparent force that
8 came down on the tile was more than enough to produce a
9 concussive injury to Ms. Redler, almost anybody.

10 **Q. Was there a way to measure the force that --**
11 **that came down on the umbrella when you pushed it over?**
12 **What that force was?**

13 A. Yeah -- yes.

14 **Q. Okay. And did you measure that?**

15 A. No.

16 **Q. Why not?**

17 A. I really didn't have to. Because no matter
18 what the force was, we know that she received a
19 concussion, and -- and the force varies. And it wouldn't
20 have been an exact force that she would have experienced,
21 so, what could I say that force was reflective of? I
22 wouldn't know. I couldn't answer that question.

23 **Q. Am I correct in stating that what you're**
24 **explaining when you keep saying you can't recreate, and**
25 **if I misstate what you're saying -- if you can't recreate**

1 it, what was the purpose of doing this demonstrative
2 testing, or any type of this testing, if you couldn't
3 recreate the conditions under which she said that she was
4 injured?

5 A. Because what we do is assimilate,
6 approximately, what was experienced by the person. And
7 engineering, overall, is not an exact science. It's an
8 approximation of events, and -- and that's what we do.

9 And, by the way, in my -- just to allow --
10 let you know what I do, I give a -- seminars each year to
11 the graduating class of mechanical engineering at CCNY
12 and Colombia, and this is what I do with these students
13 is, I will allow them to create in their life, that when
14 they go out and graduate, that they're not going to have
15 all the wherewithal to do everything. That they have to
16 substitute what they know and what they've learned over
17 the years in creating something to evaluate. So that
18 what -- the valuation is credible.

19 Q. Okay. Would the -- would the force with
20 which the pole went over be different from someone
21 actually pushing it, as opposed to a gust of wind going
22 under the umbrella, and pushing it over -- blowing it
23 over?

24 A. That had six -- it's interesting how the
25 Rimkus Consulting Group -- I don't have to go through all

1 the names -- came up with the fact that it would be
2 different.

3 Tell me. Whether I push it -- the pole over,
4 or whether I hold -- take some wind and push the umbrella
5 over in the same way, so the force would be approximately
6 the same. What would be the difference? Nothing. The
7 force is the force.

8 What hit her was the pole. That's all that
9 we're interested in, is this steel pole coming in contact
10 with a finite part of the temporal area of her brain.

11 Q. Right. Though, what I'm asking you is: If
12 the wind goes under the umbrella and pushes it over, is
13 that force -- or could that force be different than me
14 standing, and pushing it over?

15 A. No. I can make those forces equal to each
16 other.

17 Q. Uh-huh.

18 A. All right. If I know the velocity -- all
19 we're interested in is the velocity of -- at the point of
20 impact. So, if I can push it over to create that
21 velocity with my arms, I can create it with the wind, or
22 push it, the umbrella part over to create, and wind up
23 with the same velocity.

24 And then what you're doing is, continually
25 pushing to make them equal, and so it's a lot of time, a

1 lot of tests. And what are you really proving? That no
2 matter what, and whether you push it from the umbrella,
3 if we had a volunteer there, a live volunteer, or if we
4 pushed it -- the pole over, that volunteer would have
5 received a concussion the same as Ms. Redler.

6 Q. And what was the velocity that it went over
7 on the day of the incident? That the pole went over,
8 fell over?

9 A. Why do you ask impossible questions? Because
10 there's no answer to that. No one in the world knows.

11 Q. Okay.

12 A. Great. Why don't you ask me what Ms. Redler
13 was thinking about just prior to the accident?

14 Q. You might tell me.

15 A. She doesn't even recall, because she had a
16 concussion.

17 Q. When you were doing the testing when the
18 umbrella was open, and you pushed it over, isn't it true
19 that it wasn't able to crack the tile? The pole did not
20 contact the tile?

21 A. Yeah. We discussed that. And that the
22 reason is, is that I -- instead of getting me two large
23 pieces, I was told that I was going to see the actual
24 umbrella. So, I wasn't told that I was going to see two
25 umbrellas that were alleged to have identical, but

1 they -- in looking at them and testing them, they were
2 significantly different from one another.

3 And then to believe that they were exemplars
4 of the actual one, I mean who's kidding who here? So
5 I -- when you say that the second one didn't fracture, I
6 predicted it wouldn't fracture in my own mind from a
7 scientific standpoint, because it was just too small.
8 And what the smaller -- the sample size, the harder it is
9 to fracture.

10 For example, if I take a big piece of wood,
11 and I hit the center piece, I might fracture it. Now, I
12 cut that wood so it's only this size, (Indicating,) I
13 wouldn't even get close to even think of even fracturing
14 it.

15 Q. Okay. So let's clear up a couple things
16 about these umbrellas before we move on.

17 When you came to the location, you were shown
18 two umbrellas; correct? And stands?

19 A. Yes.

20 Q. Correct? One was the tan color, one was the
21 orange color; right?

22 Yes?

23 A. I only looked at it from the photographs that
24 I took, and, yes.

25 Q. Okay. And do you recall me explaining to

1 you, that the orange color umbrella was not an exemplar
2 of the umbrella that was alleged to have caused the
3 incident; do you remember that?

4 A. No.

5 Q. Okay. Do you remember me showing you --
6 well, actually, you were at the -- you could see the pool
7 from where we were; right? Doing that inspection.

8 A. Yeah. Yes.

9 Q. And you could see the umbrellas, they were
10 still there at the pool; right? Yes?

11 The pool -- the umbrellas were out at the
12 pool?

13 A. Go ahead. Finish your --

14 Q. That's my question. You could see the
15 umbrellas that were at the pool; correct?

16 A. I could look around and see other umbrellas,
17 yes.

18 Q. Right. And you could see that that orange
19 umbrella was nowhere in relation -- did not look like any
20 of the other umbrellas that were at the pool; right?
21 Yes?

22 A. I don't recall.

23 Q. Okay. And you said that you had already seen
24 photographs of what the original, or actual umbrellas
25 were, so tell me what the difference is between the

1 umbrellas that you tested, and the umbrella that you say
2 is the actual umbrella?

3 A. I -- I haven't seen the actual umbrella. I
4 only saw photographs.

5 Q. Okay. So tell me ---

6 A. The photographs weren't --

7 Q. -- how they're different than the photos?

8 A. -- they're not depicted, in my opinion, what
9 the -- what I -- I viewed at the time of my inspection.
10 One is -- what I do know is that they both was steel
11 poles. And one was wider than the other in
12 circumference.

13 Q. Right. And you were told that the orange
14 umbrella was not the exemplar, but the tan umbrella was
15 the umbrella that was used at the pool; correct?

16 A. I don't recall anyone telling me that.

17 Q. Okay.

18 A. At all.

19 Q. Okay. All right. So which umbrella was able
20 to break the tile?

21 A. Well, when you say which umbrella, you have
22 to understand --

23 Q. Or which pole of the umbrella?

24 A. Both -- both would have been able to break
25 the original the tile.

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1 Q. I didn't ask you what would have. Which one
2 did?

3 A. The one -- I told you why it wouldn't -- it
4 was impossible to break the other one because of the
5 size, the small size of the sample.

6 Q. Which umbrella broke the tile?

7 A. The first one. The one on the left.

8 Q. The orange one, or the tan one?

9 A. Facing towards the pool. The one on the
10 left.

11 Q. And did it break the tile while the umbrella
12 was open, or while it was closed?

13 A. It was open.

14 MS. BENTZ: Are you sure?

15 MS. CHARLES-COLLINS: Karin, you know better
16 than that. Don't ask him if he's sure.

17 THE WITNESS: It was open. Remember --

18 MS. BENTZ: Okay. I'm just --

19 MS. CHARLES-COLLINS: Karin.

20 THE WITNESS: I had to break it at a point
21 where the umbrella would not hit the ground.

22 MS. BENTZ: Okay.

23 MS. CHARLES-COLLINS: All right.

24 BY MS. CHARLES-COLLINS:

25 Q. Do you know what -- what are you relying on

1 to say that -- what's your basis for saying that

2 Mrs. Redler had a severe concussion?

3 A. Because of the permanency of the -- that's
4 gone on for two years, she has residual neurological
5 deficits. That during the time -- and we don't know, by
6 the way, from the time she received the initial
7 concussion, and the time she finally requested to be
8 taken to the hospital, how much her brain deteriorated
9 during those hours. And I don't know the -- I don't
10 recall the time element involved, but she should have
11 been taken immediately there, and not stressed her brain
12 for any reason whatsoever.

13 Even, just looking at a TV, asking or
14 answering questions, being interviewed. All that
15 stresses the brain, and continually deteriorates the
16 preexisting condition relating to the concussive effect
17 that the pole had on her brain.

18 So, we don't know, even after the fact she
19 was hit, because no one is able to determine that, and
20 what activities that she performed during that time.

21 Q. What evidence do you have that her brain
22 deteriorated?

23 A. We don't know. We know that, though, that if
24 it's not taken care of immediately, and she's stressed in
25 any way, what any type of questions, any type of

1 activity, that there is an effect on the preexisting
2 condition.

3 Q. What evidence do you have that there was any
4 effect on her, at all? Is this just an assumption?

5 A. No. But if you read peer reviewed articles
6 on the care and treatment of individuals that are
7 involved in concussive incidents, they immediately are
8 taken away, and immediately placed in -- in the situation
9 where they are not preoccupied with anything with
10 reference to their brain.

11 And in this case, the Marriott Hotel did not
12 recognize that her brain was involved, which anybody --
13 any witness would have, that's experienced, and that they
14 let her go back to her room.

15 Q. Okay. So tell me what evidence you relied
16 on, what documents, what statements, what you relied on,
17 to say -- to come up with the opinion that she had a
18 severe concussion?

19 A. Well, because of the persistence within the
20 last two years, that she has residual neurological
21 deficits.

22 Q. But in your report of December of 2014, what
23 did you rely on to come up with that conclusion for this
24 report?

25 A. The -- only the medical -- medicals from

1 the neurologist on St. Thomas.

2 Q. Okay. Now, when you were testifying earlier
3 about concussions, you said a concussion is a concussion
4 is a concussion. So if we say that she has a mild
5 concussion, that doesn't make sense. But you say she has
6 a severe concussion, and that makes sense. How is
7 that --

8 A. No. Okay. That's a good point. A mild
9 concussion would have resulted in a -- if taken care of,
10 she would have been brought back to normal over a short
11 period of time.

12 But the fact that she is -- the steel came in
13 contact with a specific area of the temporal region of
14 her brain, and it's been two years, and she still has
15 residual effects, it couldn't be that mild of a
16 concussion.

17 Q. And what are you relying on to say that she
18 has these residual effects?

19 A. The reports by my discussions with Dr. Share,
20 more than anything else, that his findings is -- is that
21 she is -- has residual consequences from the -- and
22 neurological deficits from that trauma.

23 Q. Okay. What scientific analysis have you done
24 to establish the amount of force required to produce a
25 severe concussion, a subdural hematoma that can actually

1 kill a young child, that this steel pole was enough to
2 produce the force to create those conditions?

3 A. Oh, that -- okay. There are peer reviewed
4 articles on impact forces to the brain, hundreds of them
5 resulting in various levels. I think, I even gave you
6 one.

7 Q. Okay.

8 A. Various levels of the -- relating to the
9 severity of the type of concussion, and that's readily
10 available.

11 There is certain impacts that change the
12 structure of the brain, other levels of impact that
13 result in subdural hematomas, or a bleeding of the brain,
14 a swelling of the brain, all these, the severity of these
15 impacts are -- they're all.

16 Peer reviewed articles on those.

17 Q. And did you rely on any specific article when
18 you were rendering your opinion for this case?

19 A. No, I -- and the reason I didn't have to is
20 because, number one, we don't know -- we know, based upon
21 the force coming down, that all these injuries can
22 result.

23 Q. Uh-huh.

24 A. Dependent upon the force. I'm not saying
25 that the force that came down could produce a subdural

1 hematoma, or kill a child, what I am saying it's capable
2 of creating a subdural hematoma, or killing a child based
3 upon the force that comes down, and that's a foreseeable
4 event.

5 **Q. What's the --**

6 A. That didn't happen here, because Ms. Redler
7 didn't receive any structural changes in her brain. She
8 didn't receive a subdural hematoma; she received a
9 straight concussion.

10 **Q. What's the difference between saying that it**
11 **can do it, and it's capable of doing it?**

12 A. Synonymous.

13 **Q. Okay.**

14 A. I -- it's the same.

15 **Q. In Paragraph 16 of your December 2014 report,**
16 **you say that the impact was extreme because of the design**
17 **of the pole. What do you mean by the impact was extreme?**

18 A. Well, the extreme about -- the pole is round.

19 **Q. Uh-huh.**

20 A. And so what happens, I can explain it in a
21 different way, so you'll under -- everyone will
22 understand.

23 If I take my heel and put it -- -and come
24 down on your toe, protect the toe with a shoe, I create a
25 force that's spread out.

1 Q. Uh-huh.

2 A. Okay. Now, I'm going to wear high heels.

3 Okay. I'm going to come down on your toe, but now on a
4 finite point. The difference is, you're going to feel my
5 weight, and that point coming into your foot.

6 In comparison, a significantly different than
7 if I took my heel on your shoe -- the top of your toes,
8 and came down. Okay.

9 One is that you'll be able to withstand the
10 heel, but you will not be able to withstand the amount of
11 finite force in the finite point.

12 Now, if I take now, this pole, the whole pole
13 is not flat, the whole pole doesn't hit you. The whole
14 circumference doesn't hit you. Just that one point on
15 that round part comes down, and a finite point, you can't
16 get -- it's not flattened out in any way. It's going to
17 come to down and severely come in contact with the
18 temporal area, which is highly sensitive. And do what it
19 did.

20 Q. And would you agree that the amount of impact
21 would vary, depending on the velocity of which that pole
22 tips over?

23 A. I said previously that the severity of the
24 concussive level relates the amount -- the velocity of
25 that pole coming down.

1 Q. Okay. Are you saying that the design of
2 the -- there's something wrong with the design of the
3 pole? Or are you just saying because of -- because it's
4 a round -- because the pole is rounded, and when it hits,
5 it hits at a finite point, that that causes the impact to
6 be extreme. Is that what you're saying?

7 A. I am saying there's something wrong with the
8 design of the pole, because this shouldn't have a
9 stanchion. It should be put right into the cement.

10 Q. Okay.

11 A. So there is something wrong with the pole.

12 Q. So the pole -- you're saying there's
13 something wrong with the pole, or there's something wrong
14 with the stanchion? What's wrong with the -- let's start
15 with what's wrong with the design of the pole?

16 A. The design of the umbrella as a whole, is
17 defectively designed for it's foreseeable use that was
18 chosen by the management of Marriott.

19 Q. Okay. So should the pole be something other
20 than round?

21 A. No. I don't know of a better type of --
22 well, sometimes you can have a -- a -- a rectangle, or a
23 square.

24 Q. Uh-huh.

25 A. But what goes up and down has to be shaped

1 the same way.

2 MS. BENTZ: And that'd be called sticking a
3 square peg in a round hole?

4 THE WITNESS: No, because you would have
5 the round -- the -- okay. Leave me alone.

6 MS. CHARLES-COLLINS: Yes.

7 THE WITNESS: Jesus. I won't even answer
8 that one.

9 MS. CHARLES-COLLINS: All right.

10 BY MS. CHARLES-COLLINS:

11 Q. What was defective about the pole? What was
12 defective about the umbrella and the stanchion, and what
13 do you base that on? Base your opinion on?

14 A. What was what?

15 Q. What was defective about the umbrella and the
16 stanchion in Paragraph 18? You say that both the
17 umbrella and the stanchion that it was placed in, were
18 defective.

19 So my question is: What was defective about
20 the umbrella? So I'll start there. What was defective
21 about the umbrella?

22 A. There wasn't anything that was defective with
23 reference to the manufacturer, and -- and sale of the
24 umbrella. The defective nature of the umbrella is the
25 fact that the Marriott Hotel should have placed

1 the -- not used the stanchion, not even purchased the
2 stanchion, but placed the pole in a receptacle --
3 receptacle in the cement, below surface.

4 Q. And what do you base your opinion on that
5 using a stanchion as opposed to burying it in the cement,
6 or placing it in the cement is -- renders it defective?
7 Renders the umbrella or the stanchion defective?

8 A. Because you'll have to eliminate the inherent
9 risk associated with protecting the guests. And that the
10 only way to do that, was to place the pole in the cement,
11 so it wouldn't be blown over.

12 Q. And your basis for that is what? Your basis
13 for rendering that opinion, what are you relying on?

14 A. Because -- oh, because that's the standard of
15 care in the industry, is that either you eliminate the
16 use of the umbrellas during high winds and gusts, a
17 predictable gust or foreseeable gusts, or you place them
18 in a position that it could withstand these gusts.

19 Q. And that -- in that case, closing them? That
20 would be one?

21 A. Closing them and locking them in place with
22 something that costs a few pennies.

23 Q. Okay. Now, when you say the industry, the
24 standard of care in the industry, what industry are you
25 relating to?

1 A. The industry that involves hotels, and
2 guests.

3 Q. Okay. And do you know that on the day of the
4 incident that the umbrellas had been closed by Marriott
5 employees --

6 MS. BENTZ: Object to the form of the
7 question. That misstates the evidence.

8 THE WITNESS: Yeah. You know what? That's
9 not correct.

10 BY MS. CHARLES-COLLINS:

11 Q. Okay. What is correct?

12 A. You understand that when you say closed --

13 Q. Uh-huh.

14 A. -- they weren't closed and locked in place
15 with something that cost two or three cents.

16 Q. I didn't ask you about locked in place. I
17 asked you whether or not they were closed?

18 A. But you see -- it's meaningless when they're
19 closed.

20 MS. BENTZ: And I'm going to --

21 THE WITNESS: Because they -- a whole bunch
22 of guests were reopening them, and there was a
23 whole bunch of guests that -- the umbrellas weren't
24 closed. Not every guest had their umbrella closed.

25 BY MS. CHARLES-COLLINS:

1 Q. Okay. So there were umbrellas that were
2 closed, that guests were reopening?

3 A. No. Their umbrellas --

4 Q. You just testified to that.

5 A. There were umbrellas that were not closed,
6 also.

7 Q. Okay. We can get to that, but that's not my
8 question.

9 A. But we don't -- we don't -- we don't know
10 that.

11 Q. Okay.

12 A. We don't know how many.

13 Q. But you just testified that there were guests
14 who were reopening umbrellas.

15 A. Yes.

16 Q. So if you have to reopen something, that
17 means that it was closed prior to?

18 A. Yes.

19 Q. Okay. What basis do you have for your
20 opinion that the subject umbrella and stanchion were not
21 fit for their intended purpose, and foreseeable exposure
22 to wind gusts?

23 A. If I give you a scientific answer, can we end
24 this?

25 Q. If you give me the basis for your opinion

1 **then that would be the --**

2 A. That's the whole issue of this case.

3 **Q. Okay. So give me the basis for this opinion.**

4 A. Because the stanchion by itself, was not
5 sufficient to withstand wind gusts that were foreseeable
6 and -- the Marriott Hotel knew about prior to the
7 incident.

8 **Q. How do you know that? What do you base that**
9 **on?**

10 A. Well, that's easy now.

11 **Q. Okay.**

12 A. You ready?

13 **Q. Yep.**

14 A. That if it could withstand those gusts, they
15 would never have to close them.

16 **Q. But how does that make it not fit for their**
17 **intended purpose?**

18 A. Because it's foreseeable that guests -- and
19 guests may reopen them or not, and it's also foreseeable
20 that employees may not close every one.

21 **Q. How does that relate to not being fit**
22 **for -- the intended purpose of the umbrella is to provide**
23 **shade or cover, so how does what you're saying make them**
24 **unfit for their intended purpose?**

25 A. Okay. You never finished the statement. Fit

1 to -- to cover a specific area so that guests would be
2 able to block out the sun --

3 Q. Uh-huh.

4 A. -- at all times. You forgot to add that.

5 Q. It's not -- what basis do you have for saying
6 that it has to be -- to block out the sun at all times?

7 A. At all times?

8 Q. Yeah. What basis?

9 A. Whether the wind is blowing or not.

10 Q. What basis do you have for saying that?

11 A. Because it's foreseeable that guests will go
12 out at any time, whether the wind is blowing or not, and
13 they want the -- the sun -- I -- I mean I went down there
14 and I watch all these people go all the way down to all
15 these islands, every one of them, you look at them, every
16 one's covered by an umbrella. I don't know what the heck
17 they're going down there for if they want to be in the
18 sun. They don't want -- but the fact is, they want to
19 block out the sun from coming on them, for whatever
20 reason.

21 So, if they are going to do that, then, the
22 management, the hotel management knows that these people
23 want the sun to be blocked out. So when we know, also,
24 when the -- when the wind blows, the sun doesn't go down.
25 It still stays out there. So it's foreseeable, that if

1 it's going to stay out there while the wind blows, they
2 want to have sun to be blocked while they're out there
3 looking at the water. They're paying, I don't know how
4 much they're -- how many hundreds of dollars they're
5 paying, they want to see the water, and they want to see
6 the sun, even though they don't want the sun on them,
7 they still want to see it.

8 **Q. What testing did you do to determine that**
9 **they weren't fit for their intended purpose and**
10 **foreseeable exposure to wind gusts?**

11 A. I thought if we answered that other question
12 we wouldn't want to go any further.

13 **Q. Nope.**

14 A. Do you remember what you asked me?

15 **Q. I sure do.**

16 A. Why don't you ask me again.

17 **Q. What tests did you do to determine that the**
18 **subject umbrella and stanchion were not fit for their**
19 **intended purpose and foreseeable exposure to wind gusts?**

20 A. Okay. The fact that Marriott knew, or should
21 have known that they'd get blown over, and they knew that
22 they get blown over because they close them. And the
23 other test I did is, I found out that when the wind blows
24 in St. Thomas, the sun doesn't go away. I stay there,
25 and watched the sun. It stayed, continued to -- it

1 continued to come down on the people.

2 Q. How do you know what risk analysis was or was
3 not done by Marriott Frenchman's Cove of the -- regarding
4 the design of the umbrellas and the stanchion?

5 A. How do I know?

6 Q. Uh-huh.

7 A. Well, one way you determine how I would know,
8 would -- my experience, is that if anybody had any
9 experience in safety engineering, risk analysis, warnings
10 and instructions, I wouldn't be here today, because they
11 could have easily concluded that the -- that the
12 umbrellas, when the wind blows above us, or predicted to
13 be -- blow above a certain level, that they -- the
14 umbrellas be closed and locked in place for a few
15 pennies. And if they did that, I wouldn't be here.

16 Knowing that -- anyone with that kind of
17 background would conclude that, and perform that protocol
18 every time the wind blew. Okay. I know the management
19 at the hotel, they were not trained to perform a risk
20 analysis. They were not trained in safety, and they were
21 not trained in warnings and instructions.

22 Was -- how expensive do you think a little
23 warning sign would be to print out on a computer about
24 danger. Keep the -- keep these umbrellas closed. Wind
25 gusts up to 55 miles an hour. Failure to follow these

1 instructions and warning, can result in severe brain
2 injuries, and possibility death.

3 Q. How do you know --

4 A. What is it --

5 Q. -- how do you know what training they did or
6 did not receive?

7 A. Because if the -- because I know.

8 Q. How do you know?

9 A. Okay.

10 Q. I need to -- I don't want you to tell me
11 because I know. I need to know specifically how you know
12 what training, or no train -- or what training the
13 Marriott Frenchman's Cove employees and/or management
14 received or did not receive?

15 A. I'd like to --

16 Q. What are you basing that on?

17 MS. BENTZ: Object to the form. Are you
18 talking about the specific ones in this case, or
19 just in general?

20 MS. CHARLES-COLLINS: I'm talking about
21 specifically what he just testified to.

22 THE WITNESS: I'd like to know how many
23 different ways you're going to answer that question
24 until you get what answer you're looking for --

25 BY MS. CHARLES-COLLINS:

1 Q. No, I'm going to --

2 A. -- I'm not going to give it to you.

3 Q. I'm going to ask until you give me an answer.

4 So, I want you to answer the question --

5 A. I gave you --

6 Q. -- how do you specifically know what training
7 the employees and/or management at Marriott Frenchman's
8 Cove received or did not receive in regards to risk
9 analysis, opening, closing umbrellas, warnings and
10 instructions? Where do you get that from?

11 A. I'm not even going to say that's a good
12 question anymore.

13 Q. That's okay.

14 A. Because it's a redundant question.

15 Q. Okay.

16 A. You ready?

17 Q. Yep.

18 A. First of all, if they did receive that kind
19 of training, and I stated in my prior reply, they
20 would -- Miss -- I would not be at this table, because
21 Ms. Redler would not have been injured. The management
22 would have put up signs, or removed the umbrellas, or
23 tied them up so no one could reopen them.

24 Q. Is it your testimony --

25 A. That's all.

1 Q. -- that a warning sign would have -- the mere
2 presence of a warning sign would mean that this would
3 never happen?

4 A. No. What -- what it would mean to me is, I
5 would be on your side, and state that Ms. Redler was
6 placed on notice of the consequence of her decision,
7 whether -- to decide whether to reopen, or leave it, or
8 even leave it open -- leave the umbrella open, or have it
9 closed.

10 Q. In Paragraph 15 of your report, you say that
11 the warnings and instructions associated with the hazard
12 were defective. What specific warnings and instructions
13 are you saying were defective? And what do you base that
14 on?

15 A. The fact is, that there were no proper oral
16 or written warnings presented to Mr. Redler -- Ms. Redler
17 and her family, or any other guests, using the umbrellas.

18 Q. And how does that make it defective?

19 A. A warning -- because warnings were required
20 because of the potential hazard, which -- which she
21 experienced with a resultant concussion, because of the
22 lack of warnings.

23 Q. Okay.

24 A. She was never placed on notice that this was
25 a foreseeable event, and that she could wind up with

1 permanent neurological deficits.

2 Q. In your report in Paragraph 14 b, you say the
3 management and owners of Marriott Frenchman's Cove has
4 been on notice for a decade that the stanchions used by
5 the Marriott were not sufficient to maintain the
6 integrity of an open umbrella when strong breezes or wind
7 was occurring. What is the basis for that opinion?

8 A. Oh, over the last 45 years, I've been
9 involved with umbrellas going over, not only in the
10 islands, but other areas in hotels, and injuring people.
11 Not all brain injuries, but injuring parts of their body.

12 This happens, as it happened here, so they
13 have been on notice for decades.

14 Q. You specifically say the management and
15 owners of Marriott Frenchman's Cove, so who at -- who in
16 management, and who -- which owner of Marriott
17 Frenchman's Cove are you saying had been on notice?

18 MS. BENTZ: Object to the form of that.

19 Because Marriott Frenchman's Cove is a time share
20 and if you're asking him to name the specific
21 owners of the time shares.

22 MS. CHARLES-COLLINS: I am asking him what
23 he's talking about. He's the one that put it in
24 his report.

25 THE WITNESS: Sure.

1 MS. CHARLES-COLLINS: He said management and
2 owners.

3 THE WITNESS: They -- the management chain,
4 the chain as a whole.

5 BY MS. CHARLES-COLLINS:

6 Q. And who are the owners that you're talking
7 about?

8 A. I have no idea, and I really don't care. All
9 I care about is the fact that the Marriott Hotels,
10 whether they're time shares or not, have been on notice
11 for decades.

12 Q. And what basis do you have to say that they
13 were on notice for decades. What notice were they on?

14 A. Because it's a known fact that wind can blow
15 over umbrellas, that's no secret. They have -- wind at
16 beaches blow over umbrellas.

17 Q. Right. So that's common knowledge; right?
18 That's -- don't need an engineer or anybody to tell you
19 that. That winds can blow over an umbrella?

20 A. At beaches. However, at a hotel is
21 significantly different. Because we're not putting the
22 umbrella in sand, here. We're -- they put it on a
23 stanchion, and it is an expectation that whatever they
24 have there for the guests, is going to be safe for all of
25 it's foreseeable uses, and foreseeable misuses. It was

1 not.

2 Q. Right. But my last question was -- I don't
3 need a scientific engineer --

4 A. You mean your last question now.

5 Q. -- to tell me -- no, I said my last question
6 was --

7 A. Oh, okay.

8 Q. You don't need -- I don't need an engineer to
9 tell me that wind can blow over an umbrella.

10 A. Yes, you do.

11 Q. Okay. Why?

12 A. In this -- with res -- not.

13 MS. BENTZ: Whether you need one or not, you
14 have one.

15 THE WITNESS: Not -- not --

16 MS. CHARLES-COLLINS: I don't know about
17 that.

18 THE WITNESS: Not -- not in the sand as we
19 all know, for a lot of different reasons. Because
20 sand's -- sand, for example, is not a stanchion, as
21 we know it. We try to get in as deep as possible,
22 but sand moves, and it can be moved very easily.

23 But the -- we have now a steel pole, and
24 a -- a stanchion that's supposed to hold the
25 umbrella up.

1 BY MS. CHARLES-COLLINS:

2 Q. Uh-huh.

3 A. From a layman's standpoint, at all times, it
4 doesn't. That's not open and obvious.

5 Q. You say Marriott deviated from the standard
6 of care followed by all hotels that umbrellas must be
7 closed when there is a strong wind. Tell me what's --
8 where that standard of care comes from?

9 A. A standard of care is not a written standard.
10 It's just something that's followed as a protocol on --
11 by an industry. And -- and that's what you find here, if
12 you go to the other hotels, they have different
13 stanchions, for example. They have them -- the umbrellas
14 closed at certain times. They have people observing the
15 guests to make sure they do stay closed.

16 Now, it wouldn't have taken much to have a
17 employee, say, the bellman, to stay in the area, or be
18 assigned to the area, that if anybody reopens or doesn't
19 have their umbrella closed, that he makes sure that he
20 goes over and tells the guests, why he's closing them,
21 and that it's to their benefit that they close them, and
22 his orders from management are to make sure that they
23 stay closed. He didn't do that.

24 Q. What basis do you have for saying -- for your
25 opinion, what facts you relied on, what authority you

1 relied on to opine that guests are unable to close the
2 umbrella at the Marriott?

3 A. Oh, I never said close. I never said that.

4 Q. In Paragraph 14 c of your report, it says
5 that the employees of the Marriott had to close all of
6 the umbrellas because guests such as Ms. Redler did not
7 have enough strength or the ability to lift up the
8 connections between the umbrella and the steel pin that
9 held the umbrella in place. That steel pin had to be
10 released in order for the umbrella to fold up.

11 A. Oh, that's good --

12 Q. What do you mean by that?

13 A. That's a good point. In order to remove the
14 pin, you have to move the umbrella up slightly to release
15 it.

16 Q. Uh-huh.

17 A. Once it's in place, the frictional force
18 between the pin and the connection to the -- part of the
19 umbrella that goes up and down the pole is sufficiently
20 high. And in order to break that frictional force, you
21 have to lift the -- you have to lift the umbrella up
22 slightly.

23 Q. Okay.

24 A. And she was too short, by the way. She'd
25 never be able to reach it.

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1 You're marking up the evidence.

2 MS. BENTZ: That's her copy.

3 MS. CHARLES-COLLINS: That's mine.

4 THE WITNESS: Oh, that's yours.

5 It looked like my marks.

6 MS. BENTZ: Some of it's pretty repetitive.

7 BY MS. CHARLES-COLLINS:

8 Q. Dr. Abraham, are all of the Exhibits that
9 you'll use to summarize or support your opinions, if
10 you're called to testify in Court, are all of those
11 attached to your report, your December 12, 2014, report?

12 A. I'm sorry, just repeat that?

13 Q. Sure. Are all of those Exhibits that you
14 would use to summarize, or support your opinions if you
15 were to testify at a trial in this matter, are all of
16 those documents attached to your December 2014 report?

17 A. I don't know. I might add some, if I have to
18 testify.

19 MS. BENTZ: Well --

20 BY MS. CHARLES-COLLINS:

21 Q. Okay.

22 A. I can't give you a definitive answer.

23 MS. BENTZ: I just want to object to the form
24 of that, because he's delineated documents in the
25 report that he's reviewed. Okay.

1 MS. CHARLES-COLLINS: Okay.

2 MS. BENTZ: All right. So we reserve the
3 right to refer to those.

4 BY MS. CHARLES-COLLINS:

5 Q. Okay. Now I know that you have been saying
6 that you spoke with Dr. Share.

7 Are you ignoring me?

8 A. No, I'm paying attention.

9 Q. Okay. Can you move your iPad for just a few
10 minutes.

11 A. (Witness complied.)

12 Q. Thanks.

13 A. Sure. I can move it this way? Can you see
14 me okay?

15 Q. Yeah. I need you to pay attention, though.

16 A. I'm here, ma'am.

17 Q. Okay. What are -- are you doing something
18 related to this case? Are you reviewing documents
19 related to this case?

20 A. No, not yet.

21 Q. Okay. So, can you put that aside while we're
22 taking this deposition and --

23 A. Sure.

24 Q. Okay. Thank you.

25 All right. I know that you've testified

1 throughout that you have spoken -- Dr. Abraham --

2 A. I'm listening.

3 Q. Okay. I know that you've testified that
4 you've spoken to Dr. Share on numerous occasions, or on
5 occasion --

6 A. Yes.

7 Q. -- on -- subsequent to drafting your
8 December 22nd, 2014 report. So, is that report final or
9 are you going to be drafting an additional report?

10 A. It depends on the amount of information
11 that's obtained in the next few days in depositions. I
12 would like to review those to see if it's necessary for
13 me to take that time to re -- to add to the preexisting
14 report.

15 Q. Okay. And the video that you took at the
16 inspection, will you be using that to support any of your
17 testimony or your opinions?

18 A. Might be of interest to -- just for
19 demonstrative purposes, just to show what happens.

20 Q. All right. Will you be conducting any
21 additional inspections with regards to the umbrellas, or
22 the stanchion?

23 A. If I have to stay in the same motel, I'm not.

24 MS. BENTZ: Stay at the Cove next time.

25 BY MS. CHARLES-COLLINS:

1 Q. Are any -- are there any tasks -- other than
2 the fact that you want to -- to maybe see what happens in
3 these depositions that are upcoming, are there any tasks
4 related to an inspection, or the opinions that you've
5 already rendered in your reports, that you feel
6 have -- are not complete, that you need to do something
7 else in order to complete those?

8 A. I have to tell you, I've been in this
9 business a long time. You finish something, you think
10 you completed it, it's like putting a -- a question for
11 interrogatories together, you get finished, you send them
12 out, and all of a sudden, you -- yeah, on it, you forgot
13 something, or you could have done something better.

14 We could of all do better reports. We could
15 all do more complete reports, we could all add something.
16 I would like to say that I hope that I don't have to do
17 any more.

18 Q. Okay. So would you be able to say -- then
19 would you be able to say that the opinions that you have
20 rendered in your report, and given here today, are those
21 your final opinions in this case?

22 A. They can't be because there's other
23 depositions that are going to take place.

24 Q. Okay. So your opinions may change based on
25 those?

1 A. No, I will add to them.

2 Q. You will add to them?

3 A. Yes.

4 Q. So the ones that you have given today, the
5 ones that you have rendered today, and the ones that are
6 contained in your December 12, 2014 report, and your
7 August 2013 report, are those opinions finalized?

8 A. They're okay for now.

9 Q. Okay.

10 A. I don't know how I'll think about how I
11 answered these questions. I mean, I will read my
12 deposition, and I will ask myself why did I say that.

13 Q. Okay.

14 A. I'm going to also say, why'd you ask me.

15 Q. No, you won't.

16 We go off the record.

17 THE VIDEOGRAPHER: Going off record at
18 4:02 p.m.

19 (At about 4:02 p.m. recess.)

20 (At about 4:04 p.m. proceedings reconvened.)

21 THE VIDEOGRAPHER: Back on record at 4:04
22 p.m.

23 BY MS. CHARLES-COLLINS:

24 Q. Dr. Abraham, did you understand the questions
25 that I asked you here, today?

1 A. Yes.

2 Q. Okay. Is there any answer that you have
3 given me throughout your deposition, that you have
4 thought about, and need to change in any way?

5 A. I don't know because I haven't reflected on
6 anything, yet.

7 Q. Okay.

8 A. But it's been fair. You were very nice; I'll
9 put that on the record.

10 Q. Thank you.

11 MS. CHARLES-COLLINS: All right. Well, I
12 don't have any further questions at this time.

13 MS. BENTZ: Okay.

14 CROSS-EXAMINATION

15 BY MS. BENTZ:

16 Q. Dr. Abraham, you have a Ph.D. in chemistry;
17 is that correct?

18 A. Yes.

19 Q. Okay. In the course of the obtaining that
20 Ph.D., did you study premed courses?

21 A. No.

22 Q. Okay.

23 A. No, I --

24 Q. Did you take any medical courses?

25 A. No. I told you where -- that I obtained my

1 medical knowledge was in the actual field in -- by two
2 things. By relating all of the hundreds of cases I've
3 been involved with, with the medical prof -- specialist
4 associated with the case.

5 I also did a lot of medical malpractice work
6 for 15 years, so I had 15 doctors on my staff, while
7 I -- during the time I owned Intercity Testing and
8 Consulting, and one of the individuals that I knew very
9 well, was the assistant medical examiner in Nassau
10 County, and I went in and observed autopsies, well over
11 fifty autopsies during the time, and from -- a whole body
12 being taken apart, every part of the anatomy, and
13 that's how I learned it. And also from books. I have a
14 lot -- a whole medical library, in New York.

15 Q. Okay. What is your --

16 A. Wait, one other thing. And the fact is, I've
17 been involved with sports injuries and concussions from
18 1980 or before, just before that, to the present time.

19 Q. That was my next question: What is your
20 experience with dealing with, or working with sports
21 injuries and concussions?

22 A. I work -- first of all, I handle concussive
23 injuries, and consult on them on a weekly basis. The
24 people that are actually injured, I -- and I speak at
25 various national conventions during the year, here, and

1 I'm going back to Europe, Munich, I'm invited back to
2 Europe, Munich, to present to EPSO, which is 80,000
3 visitors. It's the largest sports convention in the
4 world, and I'm the only one speaking there on concussive
5 injuries in sports.

6 And I deal with it, and I write peer review
7 articles, and I have products that -- that are directly
8 involved with protecting individuals, and significantly
9 reducing the effect of the impact on the brain in a
10 variety of sports.

11 Q. When you say you have products, did you
12 design products?

13 A. Yeah. They're my patents.

14 Q. Okay. And you hold patents on --

15 A. A large number of -- a large number of
16 patents on these products.

17 Q. Okay. And is it your opinion, that there was
18 this spoliation of evidence in this case?

19 A. That's what we --

20 MS. CHARLES-COLLINS: Object to the form.

21 THE WITNESS: That's how we designated,
22 throughout the United States. I don't know why
23 it's any different in St. Thomas.

24 BY MS. BENTZ:

25 Q. Do you know what I mean by spoliation?

1 A. Yeah, it's dissipated.

2 Q. Okay.

3 A. It evaporated.

4 Q. Did that -- the fact that the umbrella, the
5 actual umbrella was not available for testing, the one
6 that hit Ms. Redler, did that affect your conclusions in
7 any way?

8 A. Not at all.

9 Q. Okay. Would it have been better for purposes
10 of your report to have had the actual evidence that --

11 A. It would have been better, because if we ever
12 go to trial, and bring in the exemplars -- I mean, we
13 could demonstrate it in court what happened, and I can go
14 through a demonstration there very easily. But it's
15 always nice, so there's no question involved, to have the
16 actual umbrella.

17 Q. Well, aren't you relying on the words -- word
18 and representations of the Defendants, that this was the
19 actual umbrella in the -- for your conclusions in your
20 report?

21 A. Yeah. But the representations were false,
22 based on their allegations.

23 Q. Okay. In other words, are exemplars as good
24 as the original -- the original umbrella?

25 A. Not in this case. I get exemplars in a lot

1 of my cases, because I will not, in any way, effect or
2 destroy or taint the evidence.

3 Q. Okay.

4 A. But you can't do that in this case, be --
5 unless I have the exact umbrella, and it wasn't the exact
6 one.

7 Q. Okay. So I'm going to show you what --
8 what's marked previously, it's your -- and I don't know
9 what number this is. It's your August 12, 2013 report,
10 for purposes of showing you the photographs which are
11 Bate Stamp Numbers 142 and 143.

12 A. Yes.

13 Q. Now, the pictures that are shown there, are
14 pictures of an umbrella pole mounted in the ground; is
15 that correct?

16 A. Correct.

17 Q. Was it your understanding that that was what
18 the type of set up was at the time Ms. Redler was
19 injured?

20 A. No, but that was available at the time, and
21 she was not sitting under an umbrella that had that type
22 of stanchion.

23 Q. Okay. Was it your understanding, that at the
24 time Ms. Redler was injured that -- were you aware of the
25 fact that the -- the Frenchman's Cove was actually

1 mounting these poles into the ground?

2 A. Yes, I was told that.

3 Q. And is that significant in any way to you?

4 A. Sure.

5 Q. Why is that?

6 A. Because they knew at that -- what they had
7 there, was dangerous --

8 Q. Okay.

9 A. -- prior to the injury.

10 Q. Right. So, do you know what a subsequent
11 remedial repair is?

12 A. Yes.

13 Q. Okay.

14 MS. CHARLES-COLLINS: Object to form.

15 THE WITNESS: But we don't have that here.

16 BY MS. BENTZ:

17 Q. Okay. So that's my question, is --

18 A. That was being done before the -- before the
19 injury.

20 Q. Being done -- what was being done?

21 A. In other words -- in other words, those --
22 those -- that was installed prior to her injury, and that
23 means there's no subsequent -- subsequent repair in this
24 case. What happened is, they should have taken out all
25 of the umbrellas knowing that they were doing this, and

1 putting -- just putting these in, and nothing else. Have
2 no other umbrellas available.

3 Q. Okay. Let me ask you about this: Did you in
4 any of your reports ever state that Ms. Redler had a
5 subdural hematoma?

6 A. Never.

7 Q. Okay. ASTM Standard 1620, is that a
8 mandatory standard?

9 A. They're all -- they're -- first of all, you
10 have to understand that anything involved with the ASTM
11 are minimum standards. Minimum standards. And -- and
12 they're all voluntary.

13 Q. So, why did you object to ASTM 1620 at the
14 time that it was proposed?

15 A. I think out of -- all of the people on the
16 committee, I was most experienced in handling -- in
17 consultation, world wide. And I had 100 Ph.D.s working
18 for me for 28 years I owned the company, before I sold
19 it. And I never wrote reports that -- I never required
20 anybody to write a report in a certain way, and all of a
21 sudden, out of the clear blue sky, you have individuals
22 have nothing better to do but attend meetings, and create
23 work for everybody else, and think they're writing a
24 standard that is the law. It's not.

25 Q. Okay. Why is the Defendants expert reliance

1 upon ASTM 1620 a faulty reliance?

2 A. Evidently, they're not privy to what the ASTM
3 really is, and the fact is, that writing a report doesn't
4 make it defective if they write in an alternative way.

5 Q. Okay.

6 A. By the way, I've never been in a courtroom
7 where they said that you didn't write the report in
8 accordance with this ASTM standard.

9 Q. Okay. Now --

10 A. It's not recognized.

11 Q. Do you recall whether or not on the day that
12 you inspected the umbrella, the exemplar umbrella at the
13 Cove, whether or not you brought with you a bathroom
14 scale?

15 A. Yeah, I had one.

16 Q. Okay. Did you weigh the umbrella?

17 A. Yeah, I weighed it.

18 Q. Okay. And did you make a record of that for
19 purposes of your report?

20 A. I think we took photographs; I didn't write
21 anything down.

22 Q. So if opposing Counsel wanted to know the
23 weight of the umbrella, she could look at her videotape?

24 A. Yes.

25 Q. Okay.

1 A. I could look at it, also.

2 Q. Okay. And we could -- now, there was a lot
3 of testimony about defective design; do you recall that
4 testimony?

5 A. Yeah. I recall that.

6 Q. Okay. Now, were you saying that the design
7 that was defective, was not the actual umbrella pole
8 itself; it was something else?

9 A. Yes.

10 Q. What was that something else?

11 A. It's the fact that the management of the
12 hotel, of the Marriott, used the stanchion that was
13 incorrect for its foreseeable use, and foreseeable
14 misuse. The stanchion should have been in the ground, so
15 it could withstand the changes in the velocity of the
16 wind.

17 Q. Okay. The -- the stanchion that was actually
18 used on the umbrella was -- was it mounted in any way to
19 the ground?

20 A. No. It -- by the way, as an alternative,
21 which we didn't discuss today. They could have bolted
22 that stanchion into the ground, and they didn't do that,
23 either.

24 Q. That was my next question. I'm going to show
25 you the -- some pictures that were attached to your

1 report. Just for purposes of example, because this is
2 not a picture of the actual stand that was used -- used
3 on this Ms. Redler's umbrella?

4 MS. CHARLES-COLLINS: Then, I'll object to
5 form, because if it's not what was used, and it's
6 not what was inspected, then what's the relevance?

7 MS. BENTZ: Okay.

8 BY MS. BENTZ:

9 Q. Do you recall -- I'm showing you Bates Stamp
10 Number 364; do you recall that there was, like, a
11 stanchion of some type with a base --

12 A. Yes.

13 Q. -- that looked -- the square base like that?

14 A. Yes.

15 Q. Okay. Do you recall whether or not there was
16 actually a bolt or a screw or anything, an area where it
17 could have been mounted?

18 A. Yes. But it doesn't take much to put a hole
19 in the stanchion -- through the stanchion, and then put a
20 bolt through -- a locking bolt into the ground, or put
21 a -- a female into the ground. I mean, a female to
22 accept the bolt --

23 Q. Okay.

24 A. -- and lock it in place.

25 Q. Okay. And do you know whether or not from

1 what you've read in the deposition testimony of the
2 Defendants and the Plaintiffs that have been taken in
3 this case, whether or not that umbrella was bolted to the
4 ground?

5 A. It was not bolted to the ground.

6 Q. Okay. Have you had an opportunity to review
7 the written procedures that were provided to the
8 Plaintiffs by the Defense as to what to do in high wind
9 situations?

10 A. Only they had it for hurricanes.

11 Q. Okay.

12 A. We didn't have a hurricane, here.

13 Q. Okay. So --

14 A. And -- and --

15 Q. Does the fact that --

16 A. -- and usually --

17 Q. Okay.

18 A. -- during hurricanes, you don't have people
19 out in the sun.

20 Q. Right.

21 A. The sun doesn't shine during hurricanes.

22 Q. Okay.

23 A. So we wouldn't have that problem.

24 Q. Well, my question is: Were the instructions
25 that were provided for hurricane, adequate instructions

1 for the management of the Cove to know what to do in a
2 situation like the one that occurred on the day
3 Ms. Redler was injured?

4 A. Yeah, those are --

5 MS. CHARLES-COLLINS: Objection, form.

6 BY MS. BENTZ:

7 Q. Go ahead.

8 A. That's an extreme case, but that's the proper
9 thing to do.

10 Q. Okay.

11 A. But usually you don't have your people out
12 there, that you have to be concerned about. The poles
13 being knocked over onto your guests.

14 Q. Okay. So -- so were there any instructions
15 that you reviewed for situations other than hurricanes,
16 that would have advised the management of the Reef or
17 their employees what to do?

18 A. No.

19 MS. BENTZ: Okay. That's all I have.

20 MS. CHARLES-COLLINS: I have a few follow up
21 questions.

22 MS. BENTZ: I knew that was going to happen.

23 REDIRECT EXAMINATION

24 BY MS. CHARLES-COLLINS:

25 Q. Dr. Abraham, the umbrella did not hit

1 Ms. -- the umbrella itself did not hit Ms. Redler;
2 correct?

3 A. Correct.

4 Q. It was the pole?

5 A. Correct.

6 Q. You're saying the pole hit her.

7 And in Defense Exhibit 1, where they're
8 photographs on page, Bates Stamp 142 and 143, there are
9 no pictures of the actual umbrella; correct?

10 A. A part of the umbrella -- you can actually
11 see the support for the umbrella. You don't see the
12 actual umbrella.

13 Q. Okay. But you can see the poles; right?

14 A. You see the pole and the support.

15 Q. Okay. So, tell me what is different about
16 the poles in those pictures -- those -- that's supposed
17 to be the actual umbrella; correct?

18 Or -- or on the -- the day of the incident
19 that picture was taken?

20 MS. BENTZ: No, that's --

21 THE WITNESS: That's not the --

22 MS. BENTZ: -- that's not a correct
23 statement.

24 THE WITNESS: -- that's not the actual
25 umbrella. That's other umbrellas that were

1 already --

2 MS. CHARLES-COLLINS: On the day of the
3 incident.

4 THE WITNESS: Correct.

5 MS. CHARLES-COLLINS: Okay. I apologize for
6 that.

7 BY MS. CHARLES-COLLINS:

8 Q. Okay. So -- but those are, that is a
9 picture. Those are pictures of other umbrellas that were
10 at the pool, the same pool that Ms. Redler was, when she
11 was alleged injured; right?

12 A. It wasn't other umbrellas; it's just one
13 other umbrella.

14 Q. Okay.

15 A. If you look at the background, I think --

16 Q. Another umbrella.

17 A. One other umbrella.

18 Q. At that same pool, she was --

19 A. Correct.

20 Q. -- where she was.

21 Okay. Tell me what's the difference in
22 dimension, or other characteristics of that -- the pole
23 in those pictures, 142 and 143, from either of the two
24 poles on the umbrellas that you inspected in December of
25 2014?

1 A. You can't tell, because I'm not there to
2 measure that umbrella. I didn't measure that umbrella,
3 so I don't know the circumference of it, but it really
4 doesn't matter, whether it's that umbrella or any other
5 umbrella, the umbrella came over, it was a steel pole, it
6 hit Ms. Redler, she wound up with a permanent and
7 residual -- permanent and residual neurological problems.

8 Q. So it doesn't matter what pole you tested?

9 A. No.

10 Q. As long as it was the steel pole?

11 A. A steel pole, plus the fact that it was large
12 enough to come over and hit her in the head.

13 Q. Okay. Is it your --

14 A. I don't mean large enough, tall enough.

15 Q. Tall enough. Okay.

16 Have you ever been qualified as an expert in
17 court to testify about the force of an umbrella falling
18 over and injuring anyone?

19 A. Where do you get these questions from?

20 Q. From my brain. But where --

21 A. Well, sure.

22 Q. Have you ever been qualified as an expert?

23 A. On umbrellas?

24 Q. Uh-huh.

25 A. What kind of umbrellas, rain umbrellas?

1 Q. No, we're talking --

2 A. Sun umbrellas?

3 Q. -- we're talking about the umbrellas in this
4 case. Have you ever been qualified to testify as an
5 expert relating to the types of facts, and the injury
6 that was caused in this case by an umbrella?

7 A. I have never been disqualified, but I've
8 never had a case that I've had to go to trial on similar
9 to this one with an umbrella.

10 Q. Now, you said that you had a scale with you,
11 and that if we watched our video, that we would know how
12 much the scale weighed. Was I videotaping right where
13 you were weighing the umbrellas?

14 MS. BENTZ: I think you meant, we'd know how
15 much the umbrella weighed.

16 MS. CHARLES-COLLINS: The umbrella weighed,
17 I'm sorry.

18 BY MS. CHARLES-COLLINS:

19 Q. Was I -- how would I know that?

20 A. You were watching me.

21 Q. Right. But I was not where you were,
22 supposedly, weighing the umbrella; correct?

23 A. Hold it. I never stopped you from getting
24 close. I never stopped you --

25 Q. That was not my question.

1 A. -- I never told you to stay back.

2 Q. That was not my question.

3 A. Yeah, but you're inferring that you didn't
4 have any access to me.

5 Q. No, I never said that.

6 A. I would have welcomed you right over there.
7 You would have helped me. You could have held the camera
8 for me.

9 Q. Mr. -- Dr. Abraham, Dr. Abraham --
10 Attorney Bentz just said that we would be able to know
11 the weight of the umbrella by our videotape, and my
12 question to you is: Was I in the proximity to you at the
13 time that you were weighing the umbrella, to be able to
14 capture on the videotape, the numbers that were on the
15 scale?

16 A. To tell you the truth, I don't recall
17 limiting you.

18 Q. That's not my question.

19 A. And I don't know where you were at the time.

20 Q. Okay.

21 A. And I don't know if you had a telescopic lens
22 on what you were using --

23 Q. Okay.

24 A. -- that you could have gotten those numbers.

25 But I never refrained you from asking me what the numbers

1 were. I would have given you the numbers. It's no
2 secret.

3 **Q. Did you write down the numbers?**

4 A. No. I was holding the camera at the time and
5 I thought the camera was recording everything. I hope it
6 was.

7 **Q. Okay.**

8 MS. BENTZ: I think it's on -- on his video.

9 MS. CHARLES-COLLINS: Okay. Okay.

10 MS. BENTZ: Just so you know.

11 MS. CHARLES-COLLINS: All right.

12 MS. BENTZ: If I can find it.

13 MS. CHARLES-COLLINS: No problem.

14 All right. I don't have any other questions.

15 MS. BENTZ: Great.

16 THE WITNESS: Wait a second, the guy involved
17 with the camera has questions. What do you want to
18 ask? Go ahead.

19 MS. BENTZ: No. Thank God.

20 THE VIDEOGRAPHER: Off the record?

21 MS. CHARLES-COLLINS: Do you want to read or
22 waive?

23 MS. BENTZ: He's reading and signing.

24 THE WITNESS: We're waiting for a question.
25 I can't hear you.

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C.J. ABRAHAM

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1 THE VIDEOGRAPHER: Going off record at
2 4:24 p.m.

3 (At about 4:24 p.m. deposition concluded.)
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REDLER vs. MARRIOTT OWNERSHIP RESORTS (ST. THOMAS)
C.J. ABRAHAM

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1 CERTIFICATE OF OATH

2 STATE OF FLORIDA

3 COUNTY OF PALM BEACH

4 I, Barbara L. Kent, RMR, RPR, FPR, CSR-MI, Notary
5 Public, State of Florida, certify that Dr. Carl Abraham,
6 Ph.D., personally appeared before me on Thursday,
7 April 23, 2015, and was duly sworn.

8

9 Signed this 1st day of May, 2015.

10

11

12

13

Barbara L. Kent

14

15

16

Barbara L. Kent, RMR, RPR, FPR, CSR-MI
Notary Public - State of Florida
My Commission No. FF 101803
My Commission Expires: March 13, 2018

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REDLER vs. MARRIOTT OWNERSHIP RESORTS (ST. THOMAS)
C.J. ABRAHAM

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA

3 COUNTY OF PALM BEACH

4 I, Barbara L. Kent, RMR, RPR, FPR, CSR-MI, Notary
5 Public, State of Florida, do hereby certify that I was
6 authorized to and did stenographically report the deposition
7 of Dr. Carl Abraham, Ph.D., that a review of the transcript
8 was requested; and that the foregoing transcript, pages 5
9 through 186, is a true and accurate record of my
10 stenographic notes.

11 I FURTHER CERTIFY that I am not a relative, or
12 employee, or attorney, or counsel of any of the parties, nor
13 am I a relative or employee of any of the parties' attorney
14 or counsel connected with the action, nor am I financially
15 interested in the action.

16

17 DATED this 1st day of May, 2015.

18

19

20

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22

23

24

25

A handwritten signature in black ink that reads "Barbara L. Kent". The signature is written in a cursive, flowing style.

Barbara L. Kent

REDLER vs. MARRIOTT OWNERSHIP RESORTS (ST. THOMAS)
C.J. ABRAHAM

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1 ERRATA SHEET
DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES
2 IN RE: Redler vs. Marriott Ownership Resorts, et al
CASE NO: 3:14-CV-0107
3 DATE: April 23, 2015

4 Deposition of Dr. Carl Abraham, Ph.D.

5 PAGE LINE CORRECTION & REASON

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19
20 Under penalties of perjury, I declare that I have read the
forgoing document and that the facts stated are true.

21

22 Signature: _____ Date: _____

23

24

25

REDLER vs. MARRIOTT OWNERSHIP RESORTS (ST. THOMAS)
C.J. ABRAHAM

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May 5, 2015

Dr. C.J. Abraham
3 Baker Hill Road
Great Neck, New York 11023

In Re: April 23, 2015, deposition of Dr. C.J. Abraham
Redler versus Marriott Ownership Resorts, et al

Dear Sir:

This letter is to advise that the transcript for the above-referenced deposition has been completed and is available for review. Please contact our office at (800)275-5991 to make arrangements for read and sign or sign below to waive review of this transcript.

It is suggested that the review of this transcript be completed within 30 days of your receipt of this letter, as considered reasonable under Florida Rules, however, there is no Florida Statute to this regard.

The original of this transcript has been forwarded to the ordering party and your errata, once received, will be forwarded to all ordering parties for inclusion in the transcript.

Sincerely,

Barbara L, Kent, RMR, RPR
Orange Legal

cc: K. Bentz; K. Charles-Collins

Waiver:

I, _____, hereby waive the reading and signing of my deposition transcript.

Deponent _____ Date _____
*Federal Civil Procedure Rule 30(c)/Florida Civil
Procedure Rule 1.310(c)

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